


IN THE COURT OF COMMON PLEAS OF
LUCAS COUNTY, OHIO

EXHIBIT 15

STATE OF OHIO,)
)
PLAINTIFF,) CASE NO. CR06-3339
)
v.)
) JUDGE BARBER
ROBERT WILSON)
) 
DEFENDANT.)

- - -
BE IT REMEMBERED, that in the trial of
the aforementioned cause on September 3, 2008,
before the Honorable James E. Barber, in the
Lucas County Court of Common Pleas, the following
proceedings were held, to wit:

APPEARANCES:

On behalf of the Plaintiff:
Assistant Lucas County Prosecutor,
Michael Loisel, Esquire

- - -
On behalf of the Defendant, Robert Wilson:
Ronnie L. Wingate, Esquire
Neil S. McElroy, Esquire

- - -
Stacey L. McDevitt, RPR, Official Court Reporter
Lucas County Common Pleas Courthouse,
700 Adams Street, Toledo, Ohio 43624
(419) 213-4477
- - -

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I N D E X

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STATE'S WITNESSESDCRRDRCFRD

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Detective Seymour

40

75

93

Roger Craig

94

104

4

Sergeant Niemiec

125

134

Odetta Scott

136

146

148

5

Janet Wilson

153/170

154/202

220

229

232

Officer Malone

234

6

Alfonzo Davis

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23

1 SEPTEMBER 3, 2008

2 COURTROOM #3

3 8:50 A.M.

4 (WHEREUPON THE FOLLOWING DISCUSSION WAS
5 HELD OUTSIDE THE PRESENCE OF THE JURY.)

6 THE COURT: I believe everyone is
7 here. Are we on the record? Okay. We are here
8 for the second day of trial in State versus
9 Wilson. We have a few motions or a motion to
10 address before opening statements. It appears
11 that the ruling will be rather crucial on how the
12 opening statements are to play out. So, in the
13 nature of a Motion in Limine, Mr. Wingate, do you
14 want to expand on your motion at this point?

15 MR. WINGATE: Yes, Your Honor, could
16 we -- you're talking about 404(b)?

17 THE COURT: 404(b) issue.

18 MR. WINGATE: Could you we have a few
19 seconds? The Prosecutor just provided us with a
20 stack of -- and just -- then we'll be ready to
21 proceed.

22 (OFF THE RECORD.)

23 THE COURT: Mr. McElroy.

1 MR. MCELROY: Can we go back on the
2 record?

3 THE COURT: Sure. Back on the record.

4 MR. MCELROY: At this time, Mr. Wingate
5 and I have both had an opportunity to review the
6 case law provided by Mr. Loisel and we're ready
7 to provide Motion in Limine 404 other acts of
8 evidence. I believe it is the State's contention
9 that the exception for other acts that would
10 apply in this case is motive, not intent or
11 scheme or plan or any of the other exceptions
12 provided for in 404(b). The important and
13 perhaps the threshold issue you and perhaps the
14 issue that the Court needs to consider throughout
15 its consideration of this motion is that the
16 standard for determining admissibility of such
17 evidence is strict and the statute and rule must
18 be construed against admissibility. There was
19 some discussion yesterday about State v. Pelok.
20 After review of that case, other than the
21 proposition that the admiss -- the rule should be
22 construed strictly, I'm not certain that Pelok
23 applies in this matter. Pelok had more to do

1 with scheme, plan, things of that nature, but
2 certainly it stands for the proposition that
3 Court's should view -- should read the statute
4 and the rule and construe it strictly against
5 admissibility.

6 It should also be noted State v. Broom
7 out of the Ohio Supreme Court and just about any
8 case regarding 404(b) motions, Courts have noted
9 that the overriding concern is that a jury will
10 consider the other acts to serve as a foundation
11 that the Defendant is inherently a bad person and
12 then use those other acts against him for fear
13 that he was not adequately punished for the
14 previous acts or was not punished at all for
15 those previous acts. In this case, and I think
16 the most important fact that is relevant
17 specifically to this case, the State's suggestion
18 or contention I believe in Mr. -- and Mr. Loisel
19 will speak to this I'm certain -- is that the
20 motive here was that the victim was a -- had been
21 a confidential informant against Mr. Wilson.
22 There is a confidential informant mentioned in a
23 police report supplied to the Defense by the

1 State of Ohio, however, we have not received nor
2 do we have knowledge that there was a motion to
3 compel disclosure of the informant in that case,
4 that disclosure of the informant's name was given
5 in that case.

6 So, the other acts alone do not tend to
7 show that Mr. Wilson had a motive. They may tend
8 to show that Ms. Navarre served as a confidential
9 informant, but it does not show that Mr. Wilson
10 had independent knowledge or knowledge from the
11 State of Ohio that Ms. Navarre had served as an
12 informant against Mr. Wilson. There may be other
13 testimony available from other witnesses that can
14 say Mr. Wilson thought that she had served as an
15 informant, but with regard to the specific acts
16 that took place in the underlying charges that
17 the State seems to introduce, there's nothing to
18 show that he knew. And if there is other
19 testimony available, which we certainly believe
20 there is that Mr. Wilson thought that Ms. Navarre
21 had served as an informant, then that evidence
22 would be more probative than evidence about
23 Mr. Wilson's alleged -- or convictions for

1 trafficking and drugs.

2 And the Court should also be aware even
3 if a case passes the 404(b) issue, it is still
4 subjected to the 403(A) dealing with relevant
5 evidence. And although relevant, evidence is not
6 admissible if its probative value is
7 substantially outweighed by the fear of
8 prejudice, returning to the overriding concern of
9 the Court and 404(b) itself is that these other
10 acts the jury will use to say, okay, Mr. Wilson
11 is inherently a bad person, he hadn't been
12 punished adequately so we should punish him
13 whether we find him guilty on this specific
14 charge or not because he's guilty of those
15 others. And if there's other evidence available
16 that would be more probative, it is the view of
17 the Defense that the other acts involving the
18 charges from 1993 and I believe the cases from
19 '94 should not be admissible. And if I may have
20 just a moment, Judge.

21 One more thing, Judge, after speaking
22 with Mr. Wingate, that the State is alleging that
23 simply because Brenda Navarre -- it is our belief

1 and the State hasn't had an opportunity to speak
2 yet -- but because Brenda Navarre was an
3 informant that Mr. Wilson must have known that
4 she was an informant on this particular case.
5 There hasn't been any evidence offered to show
6 that he knew that. And the knowledge is simply
7 imputed that Mr. Wilson knew that Ms. Navarre was
8 a snitch, and this is simply an assumption at
9 this time. And if there is other evidence to be
10 offered, that evidence would be more probative,
11 and it is our contention that it should not come
12 in under 404(b) because it does not show motive.
13 And even if it does come through the 404(b) test,
14 it should not come in under 403(A) because there
15 is other evidence available.

16 THE COURT: Thank you, Mr. McElroy.
17 Mr. Loisel.

18 MR. LOISEL: Thank you, Judge. Just so
19 the record is clear, I think this hearing this
20 morning stems from a motion that the State filed
21 in June of 2007 with respect to the notice of
22 intent to use evidence. That ruling I think has
23 been held in abeyance until this point. I

1 believe, I guess Defense Counsel can correct me
2 if I am wrong, that today is essentially a Motion
3 in Limine to exclude that evidence. So, with
4 that in mind, a couple of things the State would
5 like to address. I've given the case law
6 approximately eight cases that the State looked
7 over last night and I provided those cases to the
8 Bench, and I can go through the facts and
9 circumstances of those cases if the Court so
10 desires, which I think backs up the State's
11 position that other-acts evidence that show
12 motive would be admissible in this particular
13 case.

14 The Supreme Court held in Lowe that
15 other-acts evidence is admissible, one, if
16 substantial evidence shows that the Defendant
17 committed the other acts; and, two, that the
18 evidence tends to prove one of the enumerated
19 purposes in Evidence Rule 404(b). The State
20 intends to plan -- strike that.

21 The State intends to call
22 Detective Seymour who was involved as a Vice
23 Narcotics Detective in 1993 with the victim,

1 Brenda Navarre, when she as a confidential
2 informant made approximately -- well, at least
3 three sales or three buys from the Defendant
4 that that detective personally viewed. Also, the
5 State intends to produce evidence of a statement
6 from Ms. Navarre that she knew that this
7 Defendant had knowledge that she was, in fact,
8 the snitch.

9 Now, Judge, when you talk about you
10 mentioned to us yesterday in State v. Pelok,
11 obviously you're familiar with that case. It was
12 a case out of your district in 1998. In that
13 case -- I think I'm -- I don't want to assume
14 that Defense Counsel is familiar with those
15 facts, but there were two incidents of alleged
16 sexual misconduct -- and I'm not trying to tell
17 the Court what it doesn't already know, but I
18 want to make it part of the record -- evidence of
19 an alleged misconduct two years prior to the
20 incident that was in front of this Court for
21 trial, was brought before the Court and, Judge, I
22 believe you ruled that it was admissible,
23 however, it was admissible to show a general plan

1 or to show that the Defendant had a general
2 propensity to lure young women in his office for
3 lewd purposes.

4 Well, upon closer look to 404(b), and the
5 Appellate Court reversed on this, the State was
6 improper in admitting that evidence because it
7 was essentially trying to show that he acted in
8 conformity with his prior lewd conduct and that's
9 not what for Rule 404(b) allows. It allows
10 evidence of as the rule states.

11 It may however be admissible for other
12 purposes such as proof of motive, opportunity,
13 intent, preparation, plan, knowledge, identity,
14 or absence of mistake or accident.

15 So, I think in that particular case it's
16 distinguished because in this case we're not
17 trying to show that he acted in conformity with
18 his drug dealing back in 1993. What the State
19 intends to show through Detective Seymour is that
20 this Defendant had a motive to kill
21 Brenda Navarre in December of 1993, and that
22 motive relates directly to the fact that she was
23 a confidential informant and that she snitched on

1 this Defendant, and because of what she did, this
2 Defendant ended up being charged with felony drug
3 cases.

4 So, with respect to that, Judge, this
5 State does not care if the jury knows that this
6 Defendant was dealing drugs in 1993, that's not
7 its purpose. We're not showing that he's acted
8 in conformity with that activity. We're trying
9 to show intent that we believe 404(b)
10 specifically allows the State to do.

11 Additionally, Judge, like I said, I
12 believe I have eight cases that I can give
13 examples of where motive, prior bad act evidence
14 was allowed in from the Supreme Court down to the
15 6th District to show motive. I can go through
16 the synopsis of those cases if the Court desires,
17 but I believe with that in mind, the State should
18 be allowed to question Detective Seymour with
19 respect to that case, thus allowing it to show
20 that this Defendant had motive to kill
21 Brenda Navarre.

22 THE COURT: All right. Mr. McElroy.

23 MR. MCELROY: Just a brief response,

1 Judge. The State made much of Pelok and whether
2 or not, it seems to me, that Pelok, that evidence
3 could have been admissible under 404(b), under a
4 common scheme or plan.

5 THE COURT: That's what was argued.

6 MR. WINGATE: Not that he acted in
7 conformity with his previous behavior but there
8 was a common scheme or plan, and this is
9 precisely why it was admitted at the trial court
10 as I'm certain this Court is aware, but Pelok was
11 reversed because identity, mistake, none of those
12 things were at issue in that trial and that is,
13 in fact, one of the tests is whether or not it is
14 at issue.

15 We can argue whether or not motive is an
16 issue in this particular trial. The State -- in
17 my limited trial experience, the State almost
18 always argues that they need not prove motive.

19 So, I'm not certain that the State has an
20 accurate reading of Pelok with regard to whether
21 he was acting in conformity with scheme or plan
22 or why it was reversed.

23 With regard to the two prong test

1 referenced by the State, I believe we agree that
2 the two prong test says that it must be
3 substantial proof that the Defendant has
4 committed the prior acts, and the second prong,
5 that one of the exceptions must apply in this
6 particular case.

7 The argument boils down to, it seems to
8 me, in this case whether or not one of the
9 exceptions is applicable. That exception the
10 State is alleging is motive.

11 It is still the position of the Defendant
12 that -- forgive me I lost my train of thought.

13 It is still the position of the Defendant
14 that motive is not the exception of -- the
15 exception of motive is not applicable in this
16 case because there's been nothing offered to show
17 that Mr. Wilson knew Brenda Navarre was a
18 confidential informant on these particular cases.

19 Lastly, I would like to point out that
20 the State of Ohio said they don't care whether or
21 not the jury knows about Mr. Wilson's drug
22 dealing. If that is the case, there is other
23 testimony available to the State that will not

1 get into the prior acts of Mr. Wilson that they
2 can elicit that he knew or did not know that she
3 was a snitch. There's other testimony available
4 that has nothing -- that has nothing to do with
5 the underlying charges that the State is seeking
6 to introduce.

7 MR. LOISEL: Judge, if I may just
8 respond.

9 THE COURT: Very shortly.

10 MR. LOISEL: Yes. Just with respect to
11 Pelok, again, I don't want to beat a dead horse,
12 you're obviously familiar with the case, but the
13 Appellate Court rules that the evidence of prior
14 misconduct was improperly admitted to show a
15 propensity to commit general kind of crime
16 charge. The State argued that other act should
17 be allowed to show a common scheme or plan, but
18 generally common scheme or plan is admitted when
19 ID was questioned. The ID in Pelok was not in
20 question. They knew who the alleged perpetrator
21 was in the instance, no issue of motive or intent
22 was offered in that particular case, so, they
23 tried to back door it through common scheme or

1 plan when really what they were trying to show
2 was a general propensity for this individual to
3 lure young women into his office for lewd
4 purposes.

5 And secondly, Judge, with respect to the
6 evidence that we intend to show, as I said, the
7 State intends to show that as per the Supreme
8 Court decision orders -- doesn't order us to, but
9 we have to follow through with the Supreme Court,
10 substantial evidence shows that the Defendant
11 committed the other alleged acts, we will show
12 that. There will be --

13 THE COURT: You've got convictions,
14 right?

15 MR. LOISEL: Convictions and the
16 detective viewed the drug sales between the
17 Defendant and the decedent.

18 Additionally, the second prong is the
19 evidence tends to prove one of the enumerated
20 purposes in Evidence Rule 404(b) motive, and
21 through the testimony of Detective Seymour we
22 will show that Brenda Navarre knew that the
23 Defendant was aware that she was a confidential

1 informant.

2 THE COURT: Well, the only reason I
3 mentioned Pelok yesterday, because the 404 issue
4 was extensively argued in that case. Went back
5 and looked at my notes and the issues in Pelok
6 were, in fact, lack of mistake and also modus
7 operandi, which is not really the issue that
8 we're looking at in this case.

9 I believe motive is a big part of this
10 case, and I believe that I'm going to have to be
11 very cautious and give a very strict cautionary
12 instruction to the jury, but I'm going to allow
13 this in under 404 with the exception. I believe
14 justice demands that that at least be allowed to
15 be argued or presented to the jury in this case.
16 Facts are facts and they have to be relevant and
17 they cannot be excessively prejudicial, but I
18 believe the State has a right to at least make
19 its case. So, I'm going to allow that testimony
20 in. Your exception is noted. Mr. McElroy.

21 MR. MCELROY: Judge, can we make certain
22 for the record that we're objecting to the ruling
23 both on 404(b) and also --

1 THE COURT: And 403 grounds. I
2 understand the exceptions are noted with respect
3 to both rulings. Are we ready to go?

4 MR. LOISEL: Yes, Your Honor.

5 THE COURT: All right. Take two
6 minutes and we'll start.

7 (WHEREUPON THE PRECEDING DISCUSSION
8 OUTSIDE THE PRESENCE OF THE JURY CONCLUDED AND
9 THE FOLLOWING PROCEEDINGS WERE HELD.)

10 THE COURT: Good morning, members of
11 the jury. Just one other instruction I wish I
12 had given to you, there may be some publicity
13 during the course of the trial here. In fact I
14 did note that there was a small little article in
15 The Blade today. You should not be reading those
16 newspaper articles because as you well know, the
17 paper doesn't always get it right, so do not read
18 anything in the -- save the articles or save The
19 Blade. Save the paper until your trial is over,
20 but don't be reading anything about the trial
21 because your decision has to be based on what you
22 hear in the courtroom and not what you read in
23 the paper. You have a few instructions that I'm

1 going to give you and then we'll have you --
2 let's have you sworn in right now.

3 (JURY PANEL SWORN.)

4 MR. WINGATE: Just could we approach?

5 MR. LOISEL: Could we approach?

6 (WHEREUPON THE FOLLOWING DISCUSSION WAS
7 HELD AT THE BENCH.)

8 MR. WINGATE: We move for separation of
9 witnesses and I think it's a joint motion.

10 MR. LOISEL: Joint motion when you get
11 a chance, if you could just make that --

12 MR. WINGATE: And the other thing I
13 would ask is that would the Court inquire if
14 someone read the article as opposed to tell them
15 they can't read any future articles. I'd like to
16 know if anyone read it this morning.

17 THE COURT: All right.

18 MR. WINGATE: All right. Thanks.

19 (WHEREUPON THE PRECEDING DISCUSSION AT
20 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
21 WERE HELD.)

22 THE COURT: The question was raised
23 did anyone see the article in The Blade this

1 morning. Raise your hand if you did. That takes
2 care of that problem. Okay.

3 Members of the jury, it is important that
4 you be fair and attentive throughout the trial,
5 you may not discuss this case among yourself nor
6 with anyone else. Do not permit anyone to
7 discuss it with you or in your presence. Do not
8 form or express any opinion about the case until
9 it is finally submitted to you. And by law, I'm
10 required to read a synopsis of that instruction
11 at each recess but if overlooked, they apply to
12 your conduct throughout the course of the time.

13 Perhaps difficult to understand is that
14 you may not discuss the case among yourselves
15 before it is finally submitted to you.

16 You will receive the opening statements,
17 the evidence, the arguments and the law in that
18 order. It would unfair to discuss the case among
19 yourselves until you receive everything necessary
20 for your decision. You must explain this rule to
21 your family and friends. When the trial is over,
22 you will be released from this instruction, at
23 that time you may discuss the case and your

1 experiences as a juror, but you are not required
2 to do so. Until that moment, please control your
3 natural desire to talk about the case both here
4 and at home. You may not talk with the
5 attorneys, parties, or witnesses during the
6 course of the trial. Likewise, the participants
7 in the trial must not talk with you. If anyone
8 should attempt to discuss this case with you,
9 please report the incident to the Court or the
10 Bailiff immediately.

11 You may not investigate or attempt to
12 obtain additional information on this case
13 outside the courtroom. It is highly improper for
14 any of you to attempt to do so.

15 Any violation of these orders may cause a
16 new trial or it may require a penalty for
17 disobedience.

18 In the event that you experience any
19 personal problem, raise your hand. You may
20 explain the matter to the Bailiff, the Court
21 Reporter or to the Court. The message will be
22 conveyed to the Court and we'll address that
23 matter at that time.

1 I have handed out to you notepads. You
2 will be allowed to take notes during the course
3 of the trial. These notes are personal to you
4 and if you decide that taking notes would
5 distract your mind in anyway while you're taking
6 notes, then you should not be taking notes.

7 You will be allowed to take those notes
8 with you into the jury room, but I should advise
9 you that someone's recollection may be different
10 than what your notes say and each of you is going
11 to have to rely on your own individual judgment
12 and recollections irrespective of whether what's
13 in the notes or how you decide any issue of fact
14 that's been presented to you.

15 Before we hear the opening statements and
16 begin to take notes, I believe it would be
17 helpful in having some instructions to follow in
18 listening to and considering the evidence.

19 After you have heard all of the evidence
20 and closing arguments of Counsel, I will give you
21 further instructions covering additional law,
22 which you are to apply in this case. It is the
23 duty of the Judge to instruct you of the law in

1 Ohio. It is your duty to follow the law both as
2 I stated now and also at the conclusion of all of
3 the evidence.

4 First of all, it is your exclusive duty
5 to decide all questions of fact. In connection
6 of this duty you must determine the effect and
7 the value of the evidence. To do this you must
8 not be influenced by your decision of sympathy,
9 prejudice or passion toward any party, witness or
10 attorney in the case.

11 If in these instructions or in the
12 instructions which I will give you at the
13 conclusion of the evidence, any principal or idea
14 is repeated or stated in varying ways, no undue
15 evidence thereon is intended and none must be
16 inferred by you; therefore, you must not single
17 out any particular sentence or individual point
18 or instruction and ignore the others, but you
19 rather should consider each instruction in
20 relation to all of the other instructions.

21 The fact that I give you some of the
22 instructions now and some at the conclusion of
23 the evidence has no significance to their -- as

1 to their relative importance, nor is the order in
2 which I give you instructions. Now, the
3 attorneys for the parties will have very active
4 roles in this trial.

5 They will make opening statements to you,
6 they will question witnesses. I anticipate they
7 will make objections and finally they will argue
8 the case as the last step before you hear my
9 final instructions and you commence with your
10 deliberations.

11 Remember that attorneys are not
12 witnesses. And since it is your duty to decide
13 the case solely on the evidence that you see and
14 hear in the case, you must not consider as
15 evidence any statement made by any attorney
16 during the course of the trial.

17 There is an exception to this rule and
18 that is if the attorneys agree to any fact. Such
19 agreement or stipulation or admission of fact
20 will be brought to your attention and then you
21 will regard such fact that has been stipulated
22 and admitted to as having been conclusively
23 established and proved without the necessity of

1 any other evidence on that fact.

2 If a question is asked and an objection
3 to the question is sustained, you will then not
4 hear the answer, and you must not speculate as to
5 what the answer might have been, nor as to the
6 reason for the objection. If an answer is given
7 to a question and the Court then grants a motion
8 to strike out the answer, you are then to
9 completely disregard such question and answer and
10 not consider them for any purpose.

11 A question in and of itself is not
12 evidence and may be considered by you only as it
13 does supply meaning to the answer. As jurors you
14 have the sole and exclusive duty to decide the
15 credibility of the witnesses who will testify in
16 this case, which simply means that it is you who
17 must decide whether to believe or not believe or
18 disbelieve any particular witness.

19 In determining these questions you will
20 apply the tests of truthfulness which you apply
21 in your daily lives. These tests include the
22 appearance of each witness upon the witness
23 stand; his or her manner of testifying; the

1 reasonableness of the testimony; the opportunity
2 he or she had to see, hear and know the things
3 concerning which he or she testified; his or her
4 accuracy of memory, frankness or lack of it;
5 intelligence, interest, and bias, if any;
6 together with all of the facts and circumstances
7 surrounding the testimony.

8 Applying these tests, you will assign to
9 the testimony of each witness such weight as you
10 deem proper. You are not required to believe the
11 testimony of any witness simply because he or she
12 was under oath. You may believe or disbelieve
13 any or all of the -- all of the testimony of any
14 witness. You should not decide any issue of fact
15 merely on the basis of the number of witnesses
16 who testify on each side of an issue. Rather,
17 the final test in judging evidence should be the
18 force and weight of the evidence regardless of
19 the number of witnesses on each side of the
20 issue. The testimony of one witness believed by
21 you is sufficient to prove any fact. Also
22 discrepancies in a witness's testimony or between
23 his or her testimony and that of others, if there

1 are any, does not necessarily mean that you
2 should disbelieve the witness, as people commonly
3 forget facts or recollect them erroneously after
4 the passage of time. You are certainly all aware
5 of the fact that two persons who are witnesses to
6 an incident may often see or hear it differently.

7 In considering a discrepancy in a
8 witness's testimony, you should consider whether
9 such discrepancy concerns an important fact or a
10 trivial one and the overall impact upon his or
11 her testimony. If you conclude that a witness
12 has willfully lied in his or her testimony, you
13 would then have the right to reject all of his or
14 her testimony, unless from all of the evidence
15 you believe that the probability of truth favors
16 his or her testimony and other particulars.

17 Are we going to have any depositions in
18 this case?

19 MR. LOISEL: No, Judge.

20 THE COURT: Okay. This concludes my
21 preliminary instructions to you and I hope they
22 will be of some assistance to you in listening to
23 and in considering the evidence that you will

1 hear in this case.

2 Please keep these instructions in mind as
3 you listen to the evidence and the statements of
4 Counsel. I may give you additional instructions
5 during the course of the trial. When the
6 evidence and closing arguments are concluded, I
7 will give you additional instructions on the law
8 which you are to follow together with the
9 instructions that you have just heard and any
10 given during the course and conduct of the trial.

11 Now, at this time you will be hearing the
12 opening statements of Counsel. These are
13 supposed to be concise and orderly descriptions
14 of each side's claims and the defenses and the
15 evidence that they expect to produce in support
16 of those claims and defenses.

17 I remind you that statements of Counsel
18 are not evidence, but they are -- it is an
19 attempt to give you a preview of what to expect
20 so when the evidence does come in you can put it
21 in some sort of structure. Each side will
22 address you once during opening statements.
23 State's attorney will address you first.

1 Mr. Loisel.

2 MR. LOISEL: Judge, separation.

3 THE COURT: Oh, yes. Any witnesses
4 who are expected to be called in this case will
5 please report to the witness room until such time
6 as they are called and, I will expect Counsel to
7 monitor the Court's ruling in that respect. All
8 set?

9 MR. LOISEL: Yes. Good morning, again,
10 ladies and gentlemen. As the Judge just told
11 you, what I'm telling you isn't evidence. I'm
12 going to give you a preview of what the State
13 intends to show. And what the State intends to
14 show is that that man dropped a 110 pound rock on
15 Brenda Navarre's head while she was laying on a
16 sidewalk, and as a result of that action,
17 Brenda Navarre died approximately a day later.

18 The State intends to show you that the
19 Defendant did this because Brenda Navarre told on
20 him. Circumstantial evidence is going to show
21 you that Brenda Navarre was working with the
22 Toledo Police and that she made some drug
23 transactions with the Defendant, and the

1 Defendant knew that Brenda Navarre had worked
2 with the police, and in the Defendant's world,
3 this is how you deal with someone who tells on
4 you, you drop a 110 pound rock on their head.

5 The State is going to call
6 Detective Seymour and he's going to talk to you
7 about the drug investigation regarding the
8 Defendant, the fact that Brenda Navarre, who is
9 our victim, who died on December 1st of -- or
10 December 2nd of 1993 as a result of 110 pound
11 rock being dropped on her head.

12 Detective Seymour is going to talk to you about
13 his relationship with Brenda Navarre, about at
14 least three transactions where he watched
15 Brenda Navarre buy drugs from the Defendant.
16 You're going to hear that Brenda Navarre knew --
17 strike that.

18 -- that the Defendant came to find out
19 that Brenda Navarre told on him, and this is what
20 he did.

21 The State is going to bring forward
22 witnesses from that night, December 1st, 1993,
23 and they're going to talk to you about what they

1 saw that night. They're going to talk about a
2 black male and a white female. A white female
3 being savagely beaten on the sidewalk on the
4 corner of Paxton and E Street here in Toledo,
5 Ohio.

6 You're going to hear from Toledo Police
7 Officers, one who is still an officer and one who
8 is now a sergeant who responded to that scene to
9 find Brenda Navarre barely alive on the sidewalk
10 with blood gushing from her head. They are going
11 to tell you what they did that night, what they
12 saw. The witnesses are also going to tell you
13 that they heard arguing between two people, black
14 male and a female around the time of the
15 homicide. The scene officers will also tell you
16 that a large boulder, the 110 pound rock laid
17 next to Brenda Navarre on the sidewalk.

18 You're also going to hear from
19 Dr. Barnett who worked in the Coroner's Office
20 and still does. She's going to talk to you about
21 the extensive injuries that Brenda Navarre
22 received, the injuries that caused her death, a
23 compressed skull fracture on the left side of her

1 head, a severe injury on the front of her head,
2 other injuries on the other side of her head, and
3 her ruling -- or her verdict was, testimony will
4 show, that it was her opinion that Brenda Navarre
5 died from blunt force injuries to the head;
6 manner of death, homicide.

7 Also you're going to hear from some
8 detectives who worked on the case back in 1993.
9 You're going to hear about tips that they
10 received, names that surfaced with respect to
11 this case. You're going to hear that
12 Robert Wilson's name was not initially one of
13 them, but they are going to tell you how they
14 investigated this case, how they talked to these
15 people, how they tried to verify information with
16 respect to what they have heard, and that back in
17 1993 and 1994, the case went cold. They didn't
18 have a suspect because none of those leads panned
19 out.

20 You're also going to hear about other
21 information, as Counsel mentioned, DNA that was
22 taken from Brenda Navarre's dead body when she
23 was at the Coroner's Office, an anal swab and a

1 vaginal swab. And you're going to hear that that
2 DNA does not come back to the Defendant.

3 You will also hear from Alfonzo Davis who
4 knows the Defendant, it's his stepfather, and
5 he's going to tell you that the admitted to him
6 what he did back in 1993.

7 You'll also hear from Detective Beavers,
8 more than likely you'll hear from other law
9 enforcement officers about the investigation and
10 after the case went cold sometime in 2003,
11 between 2003 and 2006, other information came
12 about. That rejuvenated this investigation.
13 You'll hear about that information.

14 And, ladies and gentlemen, once you have
15 an opportunity to hear all of the evidence, all
16 of the information that you hear is going to
17 point directly to Robert Wilson back to that
18 night in 1993, and the evidence will show that he
19 is the man that dropped that 110 pound boulder on
20 Brenda Navarre's head causing her death.

21 THE COURT: Mr. Wingate.

22 MR. WINGATE: Good morning, ladies and
23 gentlemen. As the Court has indicated and the

1 Prosecutor has indicated that as we address you
2 what we're saying is not evidence but what we
3 believe the evidence will show in this case. And
4 in this case there will be one witness -- we're
5 talking about a 1993 homicide -- there will be
6 one witness that the State will present. There
7 will be no physical evidence as the State has
8 indicated. They talked about 110 pound boulder,
9 but the evidence will show that any physical
10 evidence that was collected in this case was
11 destroyed by the police. Collected in 1993 and I
12 want to say in 2006, destroyed. Anything from
13 that physical evidence that could be utilize to
14 buttress what this one witness will say is gone.
15 So, you don't have any physical evidence, the
16 State doesn't -- can't give you any.

17 DNA, as the Prosecutor told you, there
18 was physical evidence, semen found as a result of
19 a vaginal and a rectal swab of Mrs. Navarre.
20 That evidence was taken, remained from 2000 --
21 I'm sorry -- 1993 until 2007. Never tested.
22 Never tested.

23 2007 Detective Beavers requested that it

1 be sent off to a DNA lab for analysis. The
2 results showed that it excluded Robert Wilson,
3 but there could have been another unknown male
4 that could be identified if there were further
5 evidence. No physical evidence.

6 We go back to this one witness,
7 Janet Wilson. And the evidence will show that
8 Mrs. Wilson from 1993 until 2003 -- and before I
9 get to that.

10 MR. LOISEL: Objection, Your Honor,
11 with respect to what Mrs. Wilson may or may not
12 testify to.

13 MR. WINGATE: I think the Prosecutor is
14 anticipating and anticipating incorrectly at this
15 point.

16 THE COURT: Well, I have no idea.

17 MR. WINGATE: Thank you.

18 THE COURT: I'm going to allow the --
19 this is opening statement. It is not evidence,
20 and if, in fact, it develops that there are
21 misstatements made during the course of opening
22 statement, we'll address it at that time in the
23 form of a curative instruction.

1 MR. WINGATE: As I said, between -- and
2 we'll get to Mrs. Wilson, but from 1993 to 2003,
3 Crime Stopper reports are coming in. Crime
4 Stopper reports that one name as being involved
5 in this homicide. Several calls, same name as
6 being involved in this homicide. Never the name
7 of Robert Wilson.

8 Now, 2003, Mrs. Wilson had a lot of
9 trials and tribulations with Robert, and at one
10 point had received a letter or had gotten a
11 letter that was intended for another female. A
12 letter indicating, As soon as I get a divorce,
13 we're going to get married, we're going to have
14 kids. And Mrs. Wilson who had experienced a
15 hysterectomy found this to be the last straw.
16 2003 she contacts the police and she makes a
17 statement.

18 MR. LOISEL: Objection, Your Honor.
19 Can we approach?

20 THE COURT: Come on up.

21 (WHEREUPON THE FOLLOWING DISCUSSION WAS
22 HELD AT THE BENCH.)

23 MR. LOISEL: Judge, in chambers

1 obviously the Court is aware of the argument that
2 Counsel made with respect to what Mrs. Wilson may
3 or may not be able to testify to. Now he's
4 explaining what she -- he thinks she's going to
5 testify to. The Court has not made ruling with
6 respect to what is allowable. I don't know that
7 Defense Counsel can articulate what she will
8 argue or what she will say at trial when the
9 Court limited the State in what it was allowed to
10 say during opening.

11 MR. WINGATE: Judge, I have no
12 intentions of going into any details of her
13 statement except for saying that she made a
14 statement in 2003. That's all.

15 THE COURT: Over -- I'll overrule it
16 at this point. Your exception is noted.

17 (WHEREUPON THE PRECEDING DISCUSSION AT
18 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
19 WERE HELD.)

20 MR. WINGATE: As I indicated, letter
21 mistakenly received by Janet talked about
22 marrying this new chick, talked about having a
23 child with her and unable to give him a child.

1 Hell hath no furry like a woman scorned. 2003,
2 statement is made to the police department. Come
3 down and testify. Won't happen. 2005, financial
4 woes being experienced by Mrs. Wilson. Come down
5 and testify. Won't do it. 2006, another
6 statement made and the police department through
7 its Crime Stopper program said, If you will come
8 down to testify before the grand jury, we will
9 give you -- I'm in charge of this program, I will
10 give you 50 crisp \$100 dollar bills. Come on in
11 and testify. Mrs. Wilson: I don't know, I'll
12 think about it. She testifies. She takes the
13 money and she testifies.

14 We then have an indictment against
15 Mr. Wilson. Mrs. Wilson: I don't think I can go
16 through with this, I'm not going to testify.
17 You're not going to testify? You take our money
18 and you're not going to testify? We'll file
19 charges against you. There are criminal charges,
20 felonies filed against Mrs. Wilson. You won't
21 testify? Somebody is going to jail for this,
22 either you or him.

23 This is the State's case. So now

1 Mrs. Wilson has negotiated a deal, a deal that
2 cannot be consummated until after this trial is
3 over, after she testifies and, of course, the
4 inference being the better the testimony, the
5 better the deal she will receive on her pending
6 felony charges.

7 This is the State's case. These are the
8 State's witnesses. The Court told you, we're
9 talking about one witness and you will use your
10 tests of truthfulness, your commonsense and your
11 reason. You will see that statements progress,
12 at least four or five potentially made by
13 Mrs. Wilson. It gets better with each retelling.

14 Prosecutor told you in voir dire, Well,
15 you won't be upset if the memories of witnesses
16 tend to fade since this was 1993 and we're
17 talking in excess of 18 years, but Mrs. Wilson,
18 money in hand, criminal charges pending,
19 statement just gets better.

20 You're talking about listening to the
21 evidence in this case, and upon listening to the
22 evidence in this case, I believe that as a jury
23 you will come to one conclusion and that is that

1 Mr. Wilson is not guilty of this offense. Thank
2 you.

3 THE COURT: Mr. Loisel, call your
4 first witness.

5 MR. LOISEL: Thank you, Judge. At this
6 time the State would call Detective Bill Seymour.

7 THE COURT: Call Detective Seymour.

8 - - -

9 DETECTIVE WILLIAM SEYMOUR,
10 being first duly sworn by the Court, testified as
11 follows:

12 THE COURT: Give us your name and
13 spelling of your name, please.

14 THE WITNESS: My name is Detective
15 William Seymour, S-E-Y-M-O-U-R.

16 THE COURT: Thank you.

17 - - -

18 DIRECT EXAMINATION

19 BY MR. LOISEL:

20 Q. Good morning, Detective.

21 A. Good morning, sir.

22 Q. Obviously you just stated your name for the
23 record. Detective, where do you work?

1 A. I work as a detective for the Toledo Police
2 Department.

3 Q. And how long have you worked for the Toledo
4 Police Department?

5 A. 23 years.

6 Q. And so that's since approximately '85 or so?

7 A. That is correct, sir.

8 Q. And if you can, just briefly give us a
9 little bit of your training and education with
10 respect to being a member of the Toledo Police.

11 A. I have an associates in law enforcement. I
12 have additional two years at University of Toledo
13 in criminal justice. I got hired in September of
14 1985, went to the Toledo Police academy which is
15 approximately six months long. From then I was
16 assigned to field operations to the streets, what
17 we call the streets, from graduation to the
18 academy until the summer of 1991. I was then made
19 a detective and assigned to the Vice Metro
20 Narcotics Unit for six years, and then in 1997 I
21 became a detective in the Crimes Against Persons
22 section which is where I'm currently at right now.

23 Q. Now, Detective, when you say in 1991 you

1 became a detective in the Vice Narcotics section,
2 explain to us what your duties were when you
3 became a detective in the Vice Narcotics.

4 A. Yes. The Vice is assigned the task of most
5 primarily narcotics, drug trafficking, drug
6 investigations, additionally prostitution and
7 gambling are also things that are addressed.

8 Q. And I think you indicated in 1993 you were
9 working for the Vice Narcotics Unit?

10 A. I was in 1993 as well, sir.

11 Q. And let me ask you this: In 1993 did up
12 occasion to investigate the Defendant Robert
13 Wilson?

14 A. I did, sir.

15 Q. And what was the nature of that
16 investigation?

17 A. It was drug trafficking.

18 MR. WINGATE: May we approach?

19 THE COURT: All right.

20 (WHEREUPON THE FOLLOWING DISCUSSION WAS
21 HELD AT THE BENCH.)

22 MR. WINGATE: Your Honor, at this
23 juncture we are renewing our objection to his

1 testimony on the basis that the probative value
2 in this matter is outweighed by any prejudicial
3 effect it will have upon the Defendant's rights
4 and him getting a fair trial, so we renew our
5 objection.

6 THE COURT: This will involve
7 Ms. Navarre; is that correct?

8 MR. LOISEL: That is correct.

9 THE COURT: Upon that representation,
10 I'm going to overrule your objection.

11 (WHEREUPON THE PRECEDING DISCUSSION AT
12 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
13 WERE HELD.)

14 BY MR. LOISEL:

15 Q. All right. Detective, I think I asked you
16 in 1993 you were involved in an investigation with
17 regard to the Defendant -- involving the
18 Defendant?

19 A. Yes, I was.

20 Q. Without too much detail, what did that
21 investigation revolve around?

22 A. Drugs.

23 Q. And how long prior to that time did you know

1 the Defendant?

2 A. That would have been when I --

3 MR. WINGATE: I would object.

4 MR. LOISEL: Just laying a foundation.

5 MR. WINGATE: No, I'm going to object.

6 THE COURT: I'm going to allow it.

7 Overruled.

8 MR. WINGATE: Your Honor, could we
9 approach? May we, please?

10 THE COURT: Sure.

11 (WHEREUPON THE FOLLOWING DISCUSSION WAS
12 HELD AT THE BENCH.)

13 MR. WINGATE: Judge, the problem I'm
14 having is this, now it is one thing to say we
15 conducted an investigation, he made the sales on
16 such and such days, but to say how long have you
17 known Robert Wilson seems to imply that he's --
18 as a police officer he's known him for a period
19 of time because of his criminal activity, and I
20 think that's highly prejudicial at this point to
21 allow this witness to testify to that. That's
22 basically what he's saying.

23 THE COURT: Under Rule 611 you're

1 allowed to add some background information, but
2 I --

3 MR. LOISEL: Just -- I'm just laying a
4 foundation so he can identify the Defendant.

5 MR. WINGATE: Then why don't you ask him
6 could he identify. You're asking how long has he
7 known him.

8 MR. LOISEL: Well, are you the
9 Prosecutor?

10 MR. WINGATE: The only way he can ask --

11 THE COURT: Well, I would be cautious,
12 but I'm going to allow you some rope, but your
13 exception is noted.

14 (WHEREUPON THE PRECEDING DISCUSSION AT
15 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
16 WERE HELD.)

17 BY MR. LOISEL:

18 Q. Now, I didn't hear you answer, Detective.

19 A. I'm sorry, could you please repeat?

20 Q. Well, strike that question.

21 Do you recognize the Defendant here in
22 court today?

23 A. I do, sir.

1 Q. And is this the same individual that you
2 were involved with in an investigation back in
3 1993?

4 A. It is, sir.

5 Q. Now, additionally with respect to the
6 investigation of this Defendant, did you have any
7 contact with a Brenda Navarre?

8 A. I did, sir.

9 Q. And in what capacity did you know
10 Brenda Navarre?

11 A. I knew Brenda Navarre as one of our
12 confidential informants.

13 Q. And could you explain to us what exactly a
14 confidential informant does for the police
15 department?

16 A. Yes. A confidential informant is a person
17 who provides information or assistance in solving
18 whatever particular crime you're investigating,
19 and in the realm of Vice Narcotics, it primarily
20 concerns drug trafficking and a confidential
21 informant, confidential would imply the person
22 wishes to remain anonymous, in other words, they
23 do not want them to be known as an informant, and

1 in this case Brenda Navarre in this case was a
2 confidential informant of ours.

3 Informants are oftentimes paid for their
4 assistance, which is primarily mostly informants
5 are paid that we use, others just do it because
6 they want to.

7 Q. Sometimes maybe they're working off charges?

8 A. Sometimes, yes. Sometimes they have pending
9 matters and they want to provide assistance to us
10 in hopes of perhaps alleviating some of their
11 later problems.

12 Q. So in 1993 you were using Brenda Navarre as
13 a confidential informant?

14 A. That is correct, sir.

15 Q. What's another name for a confidential
16 informant?

17 A. CI or a street term would be a snitch.

18 Q. And was she involved with your investigation
19 of the Defendant?

20 A. She was, sir.

21 Q. And explain to us how she was involved with
22 your investigation of the Defendant.

23 A. How Brenda Navarre was involved was, which

1 is typical, but any confidential informant, if
2 they know persons that are known or suspected of
3 selling drugs, they will set them up. They will
4 utilize -- set them up and take police with them
5 to purchase narcotics or perhaps they'll go
6 purchase narcotics and subsequently we may do
7 search warrants. In this particular case
8 Brenda Navarre took -- on a few occasions did take
9 police officers with her.

10 Q. And if you recall how many times did
11 Brenda Navarre purchase narcotics from the
12 Defendant while you were there?

13 A. Three times while I was observing.

14 Q. And where did this take place?

15 A. This took place in the McDonald's lot at
16 Front and Main in east Toledo, that's in Lucas
17 County, Ohio.

18 Q. And if you recall what were the narcotics
19 that she was purchasing from the Defendant?

20 A. That would be crack cocaine.

21 Q. And did you personally observe these
22 transactions?

23 A. I did, sir.

1 Q. And in general when you use a confidential
2 informant or a CI and you obtain drugs, do you
3 generally indict those cases immediately?

4 A. No, sir, we do not.

5 Q. And why don't you?

6 A. Generally speaking when you use a
7 confidential informant, in order to protect the
8 identity of the confidential informant as well as
9 the identity of the undercover officer, typically
10 hold onto the warrants for several weeks, even
11 several months in hopes that by the time the
12 person gets arrested that they won't recall that
13 specific incident.

14 Q. Now, just so we can make sure we're clear,
15 do you remember the dates on the purchases that
16 Brenda Navarre made from the Defendant?

17 A. The approximate dates, yes, sir. The first
18 one was either June 11th or 12th. The second one
19 was June -- I'm sorry, June 11th or 12th, that
20 would be 1993. The second one I believe June
21 16th, 1993, and the third one was September -- I'm
22 sorry, August 12th of 1993.

23 Q. And you indicated that you were there

1 personally and viewed these sales?

2 A. I did, sir.

3 Q. And you saw the Defendant there on those
4 three separate occasions?

5 A. I did, sir.

6 Q. And I asked you about indicting. As a
7 result of this information that you gained from
8 your confidential informant, from Brenda Navarre,
9 did you go forward --

10 A. Yes.

11 Q. -- with any criminal charges?

12 A. Yes, we did.

13 Q. And did you stay in contact with
14 Brenda Navarre after the last purchase, August
15 12th of 1993?

16 A. Yes, we had periodic contact.

17 Q. And how would you talk to her when you had
18 contact with her?

19 A. Periodically she would call to see if --
20 perhaps providing additional information or
21 assistance on perhaps other people, and then I
22 received a final call from her at the -- I believe
23 it was the end of November of 1993.

1 Q. And did you ever talk to her again after
2 that?

3 A. No, sir, I did not.

4 Q. And what was the nature of that call?

5 MR. WINGATE: I will object. I will
6 object. May we approach?

7 (WHEREUPON THE FOLLOWING DISCUSSION WAS
8 HELD AT THE BENCH.)

9 THE COURT: I assume hearsay.

10 MR. WINGATE: Yes, Your Honor, because
11 if he's going to testify as to what
12 Brenda Navarre said to him, that is clearly
13 hearsay. We have no opportunity to confront any
14 witnesses.

15 MR. LOISEL: 803 exception, hearsay
16 exception 803(3). This Defendant is going to
17 talk about Brenda Navarre's state of mind during
18 the phone call. She's -- he's not -- at least
19 not going to testify as to anything that the
20 Defendant said. It was what the witness said in
21 her state of mind at that time and that is a
22 clear exception under 803(3). It is a
23 declaration. It is a statement of the

1 declarant's then existing state of mind.

2 THE COURT: Maybe we ought to take a
3 recess and see exactly what this witness is going
4 to testify. I don't know what he's going to say.

5 MR. LOISEL: Well, that's fine.

6 THE COURT: Due for a recess anyways.

7 (WHEREUPON THE PRECEDING DISCUSSION AT
8 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
9 WERE HELD.)

10 THE COURT: I have an evidentiary
11 issue that we need to address outside of your
12 presence, so we're going to take a short recess.

13 Again, do not discuss this case among
14 yourselves, nor with anyone else. Do not allow
15 anyone to discuss this case in your presence, nor
16 form or express any opinion about the case until
17 the case has been submitted to you. Be in recess
18 for 15 minutes.

19 (RECESS TAKEN.)

20 (WHEREUPON THE FOLLOWING DISCUSSION WAS
21 HELD OUTSIDE THE PRESENCE OF THE JURY.)

22 THE COURT: All right. We are in
23 chambers outside the presence of the jury.

1 Officer Seymour -- Detective Seymour has just
2 been asked a question about a statement that
3 Brenda Navarre made back to him in 1993 and
4 objection based on hearsay; am I correct?

5 MR. WINGATE: That is correct, Your
6 Honor.

7 THE COURT: Has been made at this
8 point. I do not, and I believe the State is
9 going to be arguing 803(3) exception, but I don't
10 even know what the statement is about or what it
11 is. Do we need to have the Detective in here to
12 testify as to what his statement will be?

13 MR. LOISEL: Judge, make a proffer.

14 THE COURT: Or tell me what it would
15 be.

16 MR. LOISEL: I can proffer to the Court
17 what this Detective is going to testify.

18 THE COURT: All right.

19 MR. LOISEL: It is the State's
20 understanding that he's going to testify to that
21 he received a phone call at the end of November
22 indicating -- well, that Brenda Navarre was
23 fearful, that she was hysterical and that she

1 indicated that the Defendant knew that she was a
2 confidential informant, and that she was fearful
3 and hysterical on the phone. The State does not
4 intend to admit any statement of the Defendant
5 because that would be improper.

6 MR. WINGATE: Our objection is not to
7 any statement of the Defendant because I don't
8 think there is any, but there is clearly hearsay
9 and there is not an exception to hearsay.

10 He's testifying that this statement --
11 he's testifying to the truthfulness of this
12 statement that she, in fact, did call and say
13 that Robert Wilson knew that she was an
14 informant. I anticipated this based upon the
15 statement, that was the opening statement that
16 was given by the State of Ohio, but that is no
17 exception to any hearsay rule.

18 If you're talking about simply her state
19 of mind, being excited, being afraid, we can
20 accept that, but to allow that statement to come
21 in, it denies Mr. Wilson and, of course, you
22 know, the only person that could testify to that
23 would be the deceased, Mrs. Navarre. He's being

1 confronted with a statement that he has no
2 opportunity to confront, cross-examine and
3 actually test the truthfulness of it, and it is
4 prejudicial at this point.

5 MR. LOISEL: Judge, I have two Supreme
6 Court cases that are directly on point with
7 respect to 803(3). As you have in front of you,
8 803(3) revolves around a statement of the
9 declarant's then existing state of mind, emotion,
10 sensation, bodily health, et cetera.

11 Yes, this is hearsay, but this is a
12 hearsay exception. We are offering it for the
13 truth of the matter and it is an exception and
14 according to 803(3) and case law, statements
15 concerning the declarant's state of mind, her
16 fear of the appellant are admissible according to
17 803(3) according to State v., it's Apanovitch,
18 A-P-N-O-V-I-T-C-H 33 Ohio St. 3d, 19. I have two
19 cases here that are Supreme Court cases that
20 outline 803(3) and it's availability with respect
21 to the declarant's fearful nature and the
22 statement and it allows them in both instances.

23 MR. WINGATE: Could you share those

1 statements with us, those case laws?

2 MR. LOISEL: I can make copies of them.

3 MR. WINGATE: We would like to review
4 them before we respond, Your Honor.

5 THE COURT: I'll give you a little
6 time. This is a significant issue.

7 MR. MCELROY: We should let the Court
8 know that this statement was not supplied to
9 Defense Counsel regarding this phone call to the
10 police and it's clearly an inculpatory statement.

11 THE COURT: Inculpatory.

12 MR. MCELROY: Uh-huh.

13 THE COURT: All right.

14 MR. LOISEL: If I may respond, I'll
15 address that with this witness, and obviously
16 Mr. Wingate has an opportunity to cross-examine
17 this witness as to the availability.

18 MR. WINGATE: Why don't you just proffer
19 to us why he -- so -- we don't have that
20 statement.

21 MR. LOISEL: I will get it from the
22 witness.

23 MR. MCELROY: It should be noted, Judge,

1 that if a police officer has a statement, that
2 knowledge is imputed to the Prosecutor's office
3 as they are --

4 MR. LOISEL: It is not a statement of
5 the Defendant. The State has no obligation to
6 give this over to the Defense.

7 MR. MCELROY: As they are all the State
8 of Ohio.

9 MR. LOISEL: That is incorrect.

10 MR. WINGATE: Could we have the cases?

11 MR. LOISEL: I will make copies of that
12 when the Judge releases us.

13 THE COURT: Go ahead, make copies.

14 We'll come back on the record after you've had an

15 opportunity to review it.

16 (RECESS TAKEN.)

17 MR. WINGATE: Your Honor, I'll indicate
18 that the State has provided us with copies of
19 State v. Frazier and State v. Reynolds, which the
20 State proposes supports their proposition. State
21 v. Reynolds is cited as 80 Ohio St. 3d 670, and
22 State v. Frazier is cited as 73 Ohio St. 3d 323.

23 In State v. Frazier, the Court states

1 that the trial court correctly ruled that the
2 statements concerning Skiba's state of mind,
3 i.e., her fear of appellant, were admissible
4 pursuant to the 803(3) and State v. Apanovitch.
5 The trial court went to great lengths to ensure
6 that the witnesses testified only to the fact
7 that Skiba expressed fear of the appellant.

8 However, in the Supreme Court case of
9 State v. Reynolds, the State says that Foster's
10 statements to her son and sister-in-law that she
11 was fearful or concerned were admissible under
12 Evidence Rule 803(3) which permits admission of a
13 statement of the declarant's then existing state
14 of mind, emotion, or sensation.

15 Goes on to say that Foster's statements
16 concerning Reynolds's actions in the days before
17 the murder and her statements explaining the
18 reasons why she was scared were clearly hearsay
19 and not admissible under any of the recognized
20 exceptions to the rule. Then Apanovitch at 21,
21 514, and I'm reading from Page 10 of the Supreme
22 Court case of State v. Reynolds.

23 Your Honor, we have no objection to this

1 Detective indicating that he received a phone
2 call from Mrs. Navarre indicating that she was
3 fearful or afraid, but to the extent that she
4 goes into who she's afraid of, why she's afraid
5 of him, all of that is excluded under the Supreme
6 Court case that the State is now offering as
7 supplemental to its position that this
8 information should come in.

9 So, for that reason based upon the case
10 law that the State has provided to the Court, we
11 believe that this is not an exception to the
12 hearsay rule and should be excluded based upon
13 the case law of the Supreme Court of State v.
14 Reynolds.

15 MR. LOISEL: Judge, if you look a
16 little closer, State v. Frazier, it indicates
17 that the trial Judge went to great lengths to
18 ensure that the witnesses testified only to the
19 fact that Skiba expressed fear of the appellant.
20 She can indicate -- Detective Seymour can
21 indicate that she was afraid of the appellant
22 during that phone call. I think that is very
23 applicable with respect to Rule 803(3). Other

1 case law suggests that she can explain why or he
2 can explain why she was fearful.

3 MR. WINGATE: The most recent Supreme
4 Court case, that being Reynolds, indicates that
5 The actions and her statements explain the
6 reasons why she was scared were clearly hearsay
7 and not admissible under recognized exceptions of
8 the rule citing Apanovitch.

9 THE COURT: Well, I've taken the
10 liberty of looking up some Weissenberger under
11 Ohio Evidence 803(3), and their citations to the
12 State v. Davis case and the State v. Stewart
13 case. The Davis case appears to be just about
14 right on point. Clearly the testimony --
15 anticipated testimony here would be hearsay, and
16 I intend to give the jury a qualifying
17 instruction that the truth of the matter cannot
18 be to ascertain from the statement because we
19 don't know, but she will be allowed to -- or the
20 testimony will be allowed to come in with respect
21 to her then existing, mental, emotional, or
22 physical condition under 803(3). I think it
23 comes in.

1 MR. WINGATE: Now, are you saying her
2 being afraid comes in or her being afraid of the
3 Defendant comes in?

4 THE COURT: She's going to be
5 allowed -- the witness is going to be allowed to
6 testify to the gist of the telephone
7 conversation, but I'm going to advise the jury
8 that it is not going to be allowed for the truth
9 of the matter because we don't know what the
10 truth is. That is going to have to be for them
11 to decide from all of the facts and circumstances
12 of the case. But I'm going to let this the
13 testimony come in with respect to the gist of
14 that phone call.

15 MR. WINGATE: All right. Then, Your
16 Honor, we'll note for the record our objections
17 and the fact that we do not believe the curative
18 instruction will be sufficient to overcome the
19 prejudicial value of this evidence that's being
20 elicited from this witness, first thing.

21 Second thing, the Court had indicated
22 that it would give a cautionary instruction
23 relative to the criminal charges that -- the

1 three drug offenses that we talked about
2 initially. Is the Court intending to give that
3 instruction?

4 THE COURT: Sure.

5 MR. WINGATE: At the end of his
6 testimony or at what point does the Court intend
7 to instruct the jury?

8 THE COURT: Well, I was -- I can give
9 it right now if you want.

10 MR. LOISEL: Well, Judge, it's the
11 State's position that during jury instructions
12 that the testimony would be made. You heard
13 testimony about prior bad acts.

14 THE COURT: That certainly come in at
15 that point.

16 MR. LOISEL: I don't think that it's
17 necessarily proper to do it at this point, but,
18 of course, obviously the Court can do as it seems
19 fit.

20 THE COURT: Well, I'll talk to the
21 jury a little bit.

22 MR. LOISEL: One final thing, Judge,
23 you mentioned that the 803(3) you're going to --

1 I'm not certain as to how you're going to
2 instruct them.

3 THE COURT: I'm going to tell them
4 that we don't know what the truth of the matter
5 asserted in this conversation are. That's going
6 to be up for them to determine from all of the
7 facts and circumstances of the case. Going to
8 allow it to come in for the purpose of explaining
9 her motive.

10 MR. WINGATE: Just one other thing, Your
11 Honor. The only other thing I want to add is
12 that as we indicated previously, this
13 information, and the Court has -- I mean, the
14 Prosecutor has stated to the Court on more than
15 one occasion that it has allowed us an
16 opportunity to come down and review the evidence
17 in this particular case relative to
18 Robert Wilson's trial, and we've taken advantage
19 of that and gone through a great deal of the
20 materials that the State of Ohio has; however, we
21 filed a motion asking that for any and all
22 information pursuant to the rules of discovery,
23 any and all information which all evidence known

1 or which may become known to the Prosecuting
2 Attorneys favorable to the Defendant and material
3 either to guilt or punishment pursuant to Ohio
4 Rules of Evidence 19(B)(1)(L), that was a request
5 that we made back in February and I believe it is
6 '08 -- '07, but a previously filed motion. We
7 had not received this information that Seymour
8 would be testifying or had even produced a report
9 indicating that there had been a conversation
10 with Mrs. Navarre relative to any fear that she
11 may have expressed at any time, and based upon
12 that, we would also object to the introduction of
13 this evidence to this jury.

14 MR. LOISEL: Judge, that motion was
15 made, I believe, I think -- I don't know if the
16 Court ruled on that. The testimony of this
17 witness will be explained through his testimony.
18 Defense Counsel will have an opportunity to
19 cross-examine as to why these statements were not
20 memorialized.

21 MR. WINGATE: Your Honor, whether
22 memorialized or not, if the State has this
23 information and the Defense has legitimately

1 requested it under the auspices of the rules of
2 discovery, then it is incumbent upon the State to
3 reveal this. This is not a trial by ambush, and
4 it is not hard, it doesn't take a rocket
5 scientist to understand when we're asking for
6 evidence either favorable to the Defendant and
7 either material to the guilt or punishment, then
8 this should be given to us not at the day of
9 trial with the witness testifying and the State
10 saying, well, Defense has an opportunity to
11 cross-examine.

12 THE COURT: I'm going to see it your
13 way. If this statement had been revealed, I
14 would have allowed it under 803(3). But the fact
15 that it was not shared -- is that, in fact, true,
16 that it wasn't shared?

17 MR. LOISEL: Judge, with respect to
18 that argument, this information is not material
19 to this Defendant's guilt or innocence.

20 THE COURT: Absolutely.

21 MR. LOISEL: To motive.

22 THE COURT: It absolutely has to go
23 with motive.

1 MR. LOISEL: And that is not material
2 to his guilt or innocence. It has to go through
3 the 404(b) information.

4 THE COURT: No. Motive is a very
5 important part of your -- also I've already ruled
6 it is a very important part of your case here and
7 for the life of me can't understand why you
8 wouldn't have revealed this information.

9 MR. LOISEL: Judge, it is not as I
10 indicated. It is not memorialized in any report.
11 The State became aware of it when I had read over
12 the transcript of the grand jury this weekend,
13 and it does not go to the guilt or innocence of
14 this party. It goes to the Defendant's motive in
15 this case; therefore, the State feels it is not
16 discoverable according to the rules. The State
17 is not trying a trial by ambush. The State is
18 reading through the rules and following the rules
19 and it believes it is following the rules with
20 respect to this.

21 THE COURT: I'm going to allow your
22 witness to testify that he received a call from
23 Ms. Navarre and based upon that information he

1 did whatever he did, but I'm not going to let
2 her -- I'm not going to let him use Mr. Wilson's
3 name. That information should have been shared.
4 Really should have.

5 MR. LOISEL: Judge, it is within the --
6 I believe the State is well within its rights.
7 The Defense Attorney --

8 THE COURT: That's information that
9 should have been shared. Motive is really
10 important in this case in light of the fact that
11 you've got one witness here. I just think that's
12 fair.

13 MR. LOISEL: So, I'm not sure exactly
14 how the State is to proceed at this point. I
15 don't want to overstep the ruling of the Court.

16 THE COURT: Just indicate that
17 received a call from Brenda Navarre and leave it
18 at that.

19 MR. LOISEL: Judge, I think the State
20 should be allowed with respect to 803(3) that she
21 was fearful. That's the whole rule -- that's the
22 whole exception to the hearsay rule, he that got
23 a call and she was fearful.

1 THE COURT: That's as far as you need
2 to go.

3 MR. LOISEL: Very well.

4 THE COURT: Okay. All right. Let's
5 go back out.

6 (WHEREUPON THE PRECEDING DISCUSSION
7 OUTSIDE THE PRESENCE OF THE JURY CONCLUDED AND
8 THE FOLLOWING PROCEEDINGS WERE HELD.)

9 THE COURT: Ladies and gentlemen of
10 the jury, at this time you'll be allowed to hear
11 a limited response from this witness with respect
12 to a phone call that he received from
13 Ms. Navarre. I'm going to allow some limited
14 testimony with regard to that phone call under
15 Evidence Rule 803(3). I'm giving you a
16 cautionary statement at this point -- or
17 instruction at this point.

18 Since Ms. Navarre is no longer available
19 to be subject to cross-examination or to give any
20 evidence with respect to this statement on her
21 own behalf, you are instructed that this
22 information and statement is received not for the
23 truth of the matter, because we don't know the

1 truth of the matter, but only to the fact that
2 the statement was made at this point. You may
3 proceed.

4 MR. WINGATE: Judge, one other thing.
5 May we approach?

6 (WHEREUPON THE FOLLOWING DISCUSSION WAS
7 HELD AT THE BENCH.)

8 MR. WINGATE: The other cautionary
9 instruction is about the charge for the drug
10 offenses.

11 MR. LOISEL: Judge, I think -- well I
12 would object. I think it is proper at the time
13 when you instruct the jury at the end of the
14 trial.

15 MR. MCELROY: I believe the rule says it
16 is proper any time the Court feels it would help
17 the jury.

18 THE COURT: Tell them what the
19 instructions are.

20 MR. LOISEL: And, Judge, with respect
21 to what you just said, I think the whole point is
22 that it is a hearsay statement, it is offered by
23 the State for the truth of the matter asserted,

1 however, it is coming in under an exception. I
2 don't know that you can tell them that it can't
3 be accepted for the truth of the matter.
4 Defense Counsel can argue that there's no way to
5 cross-examine that statement, however, when you
6 look at that at hearsay rule, it indicates that
7 it is being offered for the truth of the matter
8 asserted and that there is an exception allowing
9 the statement in. So, I think what you just told
10 them contravenes what the hearsay rules allow the
11 statement to come in for. You see what I'm
12 saying?

13 MR. MCELROY: I believe it is still
14 hearsay.

15 THE COURT: I think it is hearsay.

16 MR. LOISEL: It is hearsay. I'm not
17 arguing that it is not hearsay, but hearsay by
18 definition is a statement made by a declarant out
19 of the present -- or that the State contends that
20 it is for the truth of the matter asserted,
21 that's why it makes it hearsay.

22 THE COURT: Explains motive or her
23 reason for making the phone call at this point

1 and that's what I'm going to allow it in on that
2 basis.

3 MR. LOISEL: I think they can argue
4 that it is not, but I'm not -- I just want to
5 make sure that the Court understands the point
6 that it is hearsay and it is offered for the
7 truth of the matter asserted.

8 THE COURT: Your objection is noted.
9 It is in the record.

10 MR. LOISEL: It is already sated to the
11 jury that it is not offered for the truth of the
12 matter.

13 THE COURT: We'll address it.

14 (WHEREUPON THE PRECEDING DISCUSSION AT
15 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
16 WERE HELD.)

17 THE COURT: You may proceed,
18 Mr. Loisel.

19 Q. Now, Detective, we were talking about a
20 phone call that you received from Brenda Navarre.

21 A. Yes, sir.

22 Q. Do you recall that line of questioning?

23 A. I do, sir.

1 Q. And do you recall approximately when you
2 received that phone call?

3 A. Yes, I do. It would have been at the end of
4 November of 1993.

5 Q. And if you know, do you know when Brenda
6 Navarre was murdered?

7 A. I believe the incident took place on
8 December 1st, 1993, and I believe that she had
9 passed away on December 2nd, 1993.

10 Q. And without getting into what Ms. Navarre
11 said to you during that -- well, first of all, how
12 did you know it was Brenda Navarre on the phone?

13 A. I talked to her. I knew her two or three
14 years. I talked to her on the phone, had a lot of
15 contact with her.

16 Q. And so you're positive that it was
17 Brenda Navarre calling you?

18 A. Absolutely.

19 Q. And without getting into what she said, what
20 was her demeanor, what was her inflection with
21 respect to the phone call?

22 A. She was very frantic. She was crying and
23 hysterical on the phone.

1 Q. So she was terrified when she was talking?

2 MR. WINGATE: I will object. He said
3 she was crying and frantic. He didn't say she
4 was terrified.

5 THE COURT: Rephrase.

6 Q. So your is testimony that she was frantic.

7 THE COURT: If you couch it in terms
8 of appeared to be or gave the appearance of, I'll
9 allow it.

10 MR. LOISEL: I'm sorry, Judge?

11 THE COURT: If you couch your question
12 in terms of did she appear to be frantic, I'm
13 going to allow it.

14 MR. LOISEL: Okay.

15 BY MR. LOISEL:

16 Q. You don't know what she was, but you heard
17 her voice over the phone, correct?

18 A. I did, sir.

19 Q. And her inflection, as you indicated, was
20 that she was frantic and what else?

21 MR. WINGATE: I will object.

22 THE COURT: Sustained.

23 MR. LOISEL: Okay.

1 Q. Now, with respect to this conversation, did
2 you ever put this down in any report or
3 memorialize it in a police report or a
4 supplemental report?

5 A. No, I did not.

6 Q. And why not?

7 A. At the time it was information that came out
8 that I passed on by word of mouth and other means
9 later, but at that point there was no incident
10 that had occurred, additionally the Vice Squad, it
11 does happen periodically where someone will call
12 you in a frantic manner.

13 MR. WINGATE: I'm going to object. The
14 question was whether or not he had memorialized
15 it in a report.

16 THE COURT: Sustained.

17 Q. So the answer is you did not?

18 A. I did not, sir.

19 Q. And why didn't you?

20 A. I did not put it in the report because at
21 this point there would have been no need for a
22 report. No incident other than what we had
23 discussed on the phone had occurred, no other

1 incident had occurred.

2 Q. And did you have any more phone contact with
3 Brenda Navarre after that phone call?

4 A. That would have been the last conversation I
5 ever had with Brenda Navarre.

6 MR. LOISEL: Thank you, Detective,
7 nothing further.

8 THE COURT: You may cross.

9 - - -

10 CROSS-EXAMINATION

11 BY MR. WINGATE:

12 Q. Now, Detective Seymour, I want to start with
13 your statement that you told this Prosecutor that
14 you had known Brenda Navarre for two or three
15 years and had a lot of contact with her; do you
16 recall telling the Prosecutor that?

17 A. Yes.

18 Q. And would this have to do with charges being
19 filed against her?

20 A. No.

21 Q. All right. In the capacity of a
22 confidential informant?

23 A. That is correct, sir.

1 Q. All right. And in knowing her two or three
2 years, would it be fair to say that more than five
3 cases she were involved in as far as being a
4 confidential informant?

5 A. Yes.

6 Q. More than 10?

7 A. I don't know about more than 10 that I was
8 personally involved with her, but I would say
9 overall probably more than that even.

10 Q. Probably more than 10. And when you say as
11 far as you've been involved in, of course in of
12 your capacity in that Vice Narcotics Unit, you may
13 take a confidential informant, you may utilize the
14 informant; is that correct?

15 A. That is correct, sir.

16 Q. Another detective, and let's say
17 Detective Beavers, if he were in the department he
18 may utilize that informant in some of his
19 investigations?

20 A. Absolutely.

21 Q. All right. So as far as Brenda Navarre
22 being a confidential informant for you, she could
23 have been working with two or three other

1 detectives on many different cases?

2 A. Absolutely.

3 Q. All right. So, as of the two or three years
4 that you were involved with her, you can't tell
5 this jury the number of cases in which she was a
6 confidential informant; would that be fair?

7 A. I could not tell you, yes, sir.

8 Q. All right. But as far as you are concerned
9 and your involvement with her, at least five to 10
10 cases she was involved in with you?

11 A. Yes, sir.

12 Q. All right. And based upon your involvement
13 as a detective in Vice Narcotics, being a
14 confidential informant is a dangerous position to
15 be in; is that correct?

16 A. It is, sir.

17 Q. All right. And as far as the buys that were
18 involved, the alleged sales that took place
19 involving Robert Wilson on June 12th, June 16th,
20 and August 12th, you personally observed these
21 transactions take place?

22 A. I did, sir.

23 Q. All right. And it would have been between

1 Robert Wilson and Brenda Navarre as you observed
2 from across the street?

3 A. That is correct.

4 Q. Okay. At any point did an undercover
5 officer accompany Mrs. Navarre over to the car,
6 anything like that?

7 A. Yes, sir.

8 Q. All right. And that would have been
9 Detective Kantura; is that correct?

10 A. That is correct.

11 Q. And Detective Kantura would have had an
12 opportunity to see the transaction take place; is
13 that correct?

14 A. Yeah, that is correct.

15 Q. As far as a witness against Robert Wilson,
16 you didn't need Brenda Navarre because you
17 actually had an undercover cop there that
18 witnessed the transaction take place; is that
19 right?

20 A. I'm sorry. Wouldn't need Brenda Navarre for
21 what? I don't understand.

22 Q. To testify.

23 MR. LOISEL: Objection, Your Honor.

1 Relevance as to what would needed to be testified
2 in a drug case.

3 MR. WINGATE: I'll rephrase the
4 question.

5 THE COURT: All right.

6 BY MR. WINGATE:

7 Q. All right. Outside of Brenda Navarre, you
8 also had an undercover detective,
9 Detective Kantura, who you indicated went over to
10 the car and observed the transaction take place?

11 A. That is correct, sir.

12 Q. All right. So then you had at least two
13 witnesses to the transactions, correct?

14 A. That is correct, sir.

15 Q. And would it be fair to say that in order to
16 protect the identity of the confidential
17 informant, Brenda Navarre, would it be fair to say
18 that you did not need her as a witness in those
19 transactions because you had the detective?

20 A. I don't recall ever using a confidential
21 informant as any witness, sir.

22 Q. Right, because you have the detective there,
23 right?

1 A. Well, yeah, I guess we don't use informants
2 as witnesses.

3 Q. All right. And the other thing is that the
4 reason you don't use is to protect their identity,
5 correct?

6 A. Absolutely.

7 Q. And so that I don't get -- so I don't
8 misunderstand you, for at least two to three years
9 she worked in the capacity as a confidential
10 informant?

11 A. That is correct.

12 Q. So we're talking from 1990 to 1991, the
13 beginning of 1990 or 1991 to 1993; is that
14 correct?

15 A. Well, I came to the Vice Squad in 1991 and
16 she was an informant at that point in time.

17 Q. All right. Let me ask you this: When you
18 came to the Vice Squad in 1991, you're saying she
19 was an informant at this point?

20 A. That is correct.

21 Q. Right. And this was information given to
22 you that she could be utilized as an informant,
23 right?

1 A. That is correct.

2 Q. You don't know how many years prior to that
3 she had been an informant?

4 A. That I do not know, sir.

5 THE COURT: Mr. Wingate, just so we're
6 clear, you indicated -- you asked a question of
7 this witness about Ms. Navarre being involved in
8 five or ten other cases, are you claiming or
9 asking cases other than those that involve the
10 Defendant or --

11 MR. WINGATE: Yes.

12 THE COURT: Is that correct?

13 MR. WINGATE: I'll clarify.

14 THE COURT: All right.

15 BY MR. WINGATE:

16 Q. As it relates to, as the Court was
17 inquiring, Mrs. Navarre's involvement as a
18 confidential informant for you, she was involved
19 in at least five to ten cases?

20 A. Yes, five to ten different cases.

21 Q. Different cases?

22 A. Yes.

23 Q. Outside of the one --

1 A. That is correct.

2 Q. -- involving Mr. Wilson?

3 A. That is correct, sir.

4 Q. And even though that number is for you, you
5 indicated that when you came into the Vice Metro
6 Unit in 1991, she had been a confidential
7 informant when you arrived?

8 A. That is correct, sir.

9 Q. You also talked about informants are often
10 paid?

11 A. That is correct, sir.

12 Q. Was Mrs. Navarre being paid?

13 A. She was, sir.

14 Q. Do you know how much she had been paid?

15 A. Absolutely.

16 Q. How much?

17 A. She was paid the standard rate, was \$30
18 dollars for a controlled buy. Do you want me to
19 explain a controlled buy or --

20 Q. Go ahead.

21 A. \$30 dollars for a controlled buy. That is a
22 buy where they purchase narcotics without an
23 officer being present. For example, if you send

1 someone to a house, they walk in the house, they
2 come back out. The second one is a direct buy
3 which is primarily what we did.

4 Q. I want to stop you right here.

5 A. Sir, yes.

6 Q. As you explained to the jury about the
7 controlled buy, a controlled buy never occurred
8 with Mr. Wilson. There was always an officer
9 there with Mrs. Navarre, correct?

10 A. Basically. Well, the first -- well, I can't
11 say yes or no to that. I would say that they
12 primarily were classified as direct buys.

13 Q. And, again, with the direct buys involving
14 Mr. Wilson, detectives there?

15 A. That is correct.

16 Q. All right. Go ahead I'm sorry.

17 A. Yes, a direct buy, depending upon the amount
18 generally was paid, the informant was paid \$60
19 dollars. If it was extreme large quantities, the
20 informant would be paid more.

21 Q. The Prosecutor said another reason or
22 incentive for an individual to become a
23 confidential informant is, one, you're being paid

1 and I think you mentioned could be to work off
2 charges?

3 A. That's possible.

4 Q. And in the case of Mrs. Navarre, was she
5 working off charges?

6 A. Not that I'm aware of.

7 Q. All right.

8 A. No.

9 MR. WINGATE: Just one second, Your
10 Honor.

11 Q. By any chance can you recall the names of
12 the individuals that Mrs. Navarre was involved in
13 under your -- the five to ten cases you were
14 involved in subject of the investigation --
15 subject of an investigation?

16 A. Oh, other people?

17 Q. Yeah.

18 A. I can't recall offhand. It is 15 years ago.
19 That I cannot recall, sir.

20 Q. Does the name Scottie Burrell sound
21 familiar?

22 A. That doesn't sound familiar to me.

23 Q. Now, let me ask you this: You received this

1 phone call in November indicating -- or she was
2 frantic and crying, or appeared to be frantic and
3 crying; is that correct?

4 A. That is correct.

5 Q. And you did not pass this information onto
6 anyone?

7 A. Not at that time.

8 Q. All right. You subsequently did not feel
9 that it warranted the filing of a report or
10 anything, you did not journalize it; is that
11 correct?

12 A. No.

13 Q. No reports?

14 A. No, sir.

15 Q. When did you pass the information on?

16 A. It would have been after her death.

17 Q. All right. And that would have been?

18 A. In December, early December of 1993.

19 Q. Okay. Did you become aware of the
20 investigation involving her death?

21 A. Yes.

22 Q. All right. And were you involved in that
23 investigation?

1 A. No, sir, I was not.

2 Q. Okay. Were you aware of any potential
3 suspects in that investigation?

4 MR. LOISEL: Objection, Your Honor. He
5 indicated that he's not aware of an
6 investigation.

7 THE COURT: This is cross-examination.
8 Some allowances are allowed.

9 A. I was not privy to any information
10 concerning the homicide case.

11 MR. WINGATE: Just one second. I may be
12 finished.

13 Q. Just a few brief questions. All right?

14 A. Yes, sir.

15 Q. See if you can recall any of the following
16 names as part of the investigations, plural, that
17 you were conducting back in -- using
18 Brenda Navarre as an informant.

19 MR. LOISEL: Objection Your Honor. It
20 has no relevance with respect to the case against
21 Robert Wilson.

22 MR. WINGATE: May we approach?

23 THE COURT: How is it relevant?

1 MR. WINGATE: Your Honor --

2 THE COURT: Approach.

3 (WHEREUPON THE FOLLOWING DISCUSSION WAS
4 HELD AT THE BENCH.)

5 MR. WINGATE: Your Honor, as this Court
6 has indicated, motive is the reason why they are
7 alleging Robert Wilson was the one who committed
8 this offense. There are in the Crime Stopper
9 reports that the State has given us, there are
10 several names, at least eight individuals that
11 were involved in drug trades that are associated
12 with Brenda Navarre. If, in fact, you're talking
13 about motive, then any one of these eight
14 individuals would have a motive. The only
15 question I'm asking him is whether or not these
16 names sound familiar as far as an investigation
17 that he conducted with the assistance of
18 Brenda Navarre acting as a confidential informant
19 and I think that is fairly relevant.

20 MR. LOISEL: Judge, I would argue it is
21 irrelevant. These names have nothing to do with
22 respect to the investigation of Robert Wilson.

23 MR. WINGATE: No, but it tends to negate

1 your proposition that he had the -- he was the
2 only one with the motive to do this.

3 THE COURT: Allow 404 testimony. In
4 I'm going to allow him some leeway. Overruled.

5 (WHEREUPON THE PRECEDING DISCUSSION AT
6 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
7 WERE HELD.)

8 Q. Okay. See if you can recall the following
9 list of names as involved in your investigation
10 utilizing Brenda Navarre as a confidential
11 informant.

12 A. Yes, sir.

13 Q. All right. John Garth?

14 A. Yes.

15 Q. Scottie Burrell?

16 A. No.

17 Q. Dave Pawlicki?

18 A. No.

19 Q. Andre Munn?

20 A. No.

21 Q. Norman Frazier?

22 A. No.

23 Q. Demoris Bankston?

1 A. No.

2 Q. James Rice?

3 A. No.

4 Q. Quanza Wyatt?

5 A. No.

6 Q. Afari?

7 A. No.

8 Q. Okay. And although those names do not sound
9 familiar, there were at least outside of
10 Mr. Wilson five to ten other individuals that you
11 had utilized Mrs. Navarre as a confidential
12 informant on; is that correct?

13 A. No, not specifically individuals. When I
14 said five to ten cases, I thought you were
15 referring to cases overall.

16 Some cases that we worked with
17 Brenda Navarre were controlled buys, which
18 generally you're going after a particular
19 residence. So, some of these people maybe I don't
20 know their names where they were actually
21 residences that we were attempting to get into
22 perhaps do a search warrant, and some, of course,
23 certainly were individuals.

1 Q. I understand that.

2 A. Yes, sir.

3 Q. But even if you talk about controlled buy,
4 you're sending the confidential informant to the
5 house to make a buy?

6 A. That is correct.

7 Q. So in that capacity she's still a
8 confidential informant?

9 A. Yes.

10 Q. All right. So, the question is even though
11 it may not have been one individual pointed out,
12 at least five to ten different cases, different
13 individuals that you had utilized her as a
14 confidential informant?

15 A. Different cases, yes, sir.

16 Q. Okay. Involving different individuals?

17 A. Yes, sometimes you don't know who the
18 individuals are, sir, but you're right.

19 Q. Okay. All right. And as far as your
20 observation on June 12th, June 16th and April 12th
21 (sic) of 1993, the transaction that took place
22 between Robert Wilson or the transaction that you
23 observed only took place between Robert Wilson and

1 Brenda Navarre with Detective Kantura there as an
2 undercover officer?

3 A. Detective Kantura was present for two of the
4 three, yes.

5 Q. For two of them. Okay. Was anyone else
6 present in two of the three -- in any of the
7 three?

8 A. We had several officers. Traditionally when
9 we're making a buy, we have multiple police
10 officers surrounding areas and observing buys.

11 Q. Okay. But certainly no one else in the
12 car --

13 A. No, no.

14 Q. -- okay -- with Mr. Wilson?

15 A. No.

16 Q. All right. Just one second.

17 MR. WINGATE: Nothing further.

18 THE COURT: Any redirect?

19 MR. LOISEL: Just briefly, Judge, may
20 we approach, please?

21 (WHEREUPON THE FOLLOWING DISCUSSION WAS
22 HELD AT THE BENCH.)

23 MR. LOISEL: Judge, I think that the

1 Defense has opened the door with respect to the
2 phone call Brenda Navarre -- as to who the call
3 was regarding. He's trying to infer it could
4 have been regarding any of five different people.
5 My question to the Detective would be the phone
6 call you received, who was it regarding. I'm not
7 asking what it said or anything else. I think
8 the door has been opened with respect to the
9 questioning about any of the five others.

10 THE COURT: He testified the phone
11 call was from her and that she was -- appeared to
12 be hysterical.

13 MR. LOISEL: Right. The inference that
14 Defense Counsel is trying to make is it could
15 have been with respect to any of the
16 investigations.

17 THE COURT: I didn't make that
18 inference.

19 MR. LOISEL: Well, I was -- just make
20 for the record I believe it does exactly what
21 he's going to argue.

22 MR. WINGATE: And I'll indicate no.

23 (WHEREUPON THE PRECEDING DISCUSSION AT

1 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
2 WERE HELD.)

3 - - -

4 REDIRECT EXAMINATION

5 BY MR. LOISEL:

6 Q. Detective, just one question. Do you recall
7 Mr. Wingate asking you a question about who was at
8 these buys, he asked you a couple of times
9 Detective Kantura was --

10 A. Yes, that's right.

11 Q. Were there any other police officers there,
12 right?

13 A. Yes.

14 Q. Do you recall him asking you about a
15 confidential informant; do you have them testify
16 during the case?

17 A. Yes, sir.

18 Q. Now, you indicated that you try not to have
19 them testify because you're trying to protect
20 their identity; is that correct?

21 A. That is correct, sir.

22 Q. Why are you trying to protect their
23 identity?

1 A. Trying to protect their identity so nothing
2 bad happens to them. We don't want --
3 confidential informant is a very dangerous
4 business and we want to protect their life as much
5 as possible.

6 MR. LOISEL: Thank you, Detective.

7 THE COURT: Anything else?

8 MR. WINGATE: Nothing further.

9 THE COURT: Members of the jury,
10 you've just heard some testimony with respect to
11 three prior or legally called three bad acts,
12 three prior drug deals that involve the
13 Defendant. I have allowed that testimony in
14 under Evidence Rule 404(b), and let me explain
15 that to you.

16 That testimony is not to be used in any
17 way, shape or form to consider the character of
18 the Defendant or any conduct that he may have
19 engaged in with respect to those three other
20 acts. Those are -- that testimony was submitted
21 solely for the purpose of shedding what light, if
22 any, upon the issue of motive, and that I will be
23 giving you written instructions on that regard,

1 but for now I'm telling you why that testimony
2 came in. You may be excused.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: You may call your next
5 witness.

6 MR. LOISEL: State of Ohio calls
7 Roger Craig.

8 THE COURT: Roger Craig.

9 - - -

10 ROGER CRAIG,
11 being first duly sworn by the Court, testified as
12 follows:

13 THE COURT: Would you please give us
14 your name and spelling of your name.

15 THE WITNESS: Roger Craig, R-O-G-E-R,
16 C-R-A-I-G.

17 THE COURT: Thank you.

18 DIRECT EXAMINATION

19 BY MR. LOISEL:

20 Q. Good morning.

21 A. Good morning.

22 Q. You live in Toledo?

23 A. Yes.

1 Q. How long have you lived in Toledo?

2 A. All my life.

3 Q. And if I may, how old are you?

4 A. 47.

5 Q. Okay. So, for the 47 years you've lived
6 here in Toledo?

7 A. Yes.

8 Q. Where do you live currently?

9 A. Dexter.

10 Q. Okay. Now, are you familiar with Toledo --

11 A. Yes.

12 Q. -- streets and such?

13 A. Yes, pretty much.

14 Q. Okay. And obviously if you've lived here
15 you're whole life, back in 1993 were you living
16 here as well?

17 A. Yes.

18 Q. Okay. Now, do you recall an incident that
19 took place on December 1st of 1993 in the area of
20 Paxton and E Street here in Toledo?

21 A. Yes.

22 Q. And tell us about that night.

23 A. Well, I was -- we were planning on going out

1 that night, me and the person who I was going to
2 see and we pulled me and my brother turned -- came
3 down E, turned on Paxton, pulled up in front of
4 the house. Now, the house is on the corner, it is
5 an old lady stay there, then the house I went to
6 is next to it, and right between those two houses
7 there was a body laying there and it was a big
8 boulder, a stone boulder that was laying somewhere
9 near her or whatever, but it looked like somebody
10 hit her with the boulder.

11 MR. WINGATE: I would object.

12 THE COURT: No, I'm going to allow the
13 question.

14 Q. Go ahead, sir. You said it looked like
15 what?

16 A. It looked like somebody hit her with a
17 boulder.

18 Q. Why do you say that?

19 A. Because it was sitting -- it was right in
20 the area and it looked like it was blood on it or
21 whatever, but when I saw it, the body, I went -- I
22 was like, Oh, man, what the -- and the lady was on
23 the porch and she said, Well, what's going on, and

1 I said, I think you all need to call, you know,
2 911.

3 So, she went on in and called 911, I
4 guess, and then I went in the house to get Johnny
5 Ham and when I went in to get him to go out, by
6 the time we come out to the door, the police was
7 everywhere and they were asking, you know, what
8 happened and blah, blah, blah, and I said -- well,
9 I told them, you know, what I --

10 Q. Let's back up for just a second. You said
11 you were going out that night?

12 A. Yes.

13 Q. Do you remember who you were going out with
14 that night?

15 A. I believe it was me, my brother, and Johnny
16 Ham.

17 Q. And what's your brother's name?

18 A. Charles.

19 Q. Okay. And were you walking, were you
20 driving, were you riding bikes, what were you
21 doing?

22 A. I was driving a Bonneville.

23 Q. Okay. Were you driving?

1 A. Yes.

2 Q. And when you pulled up to that area, where
3 did you stop?

4 A. Right in front of the second house.

5 Q. And who were you going to visit in that
6 second house, if you recall?

7 A. Johnny Ham.

8 Q. Okay. Now, you got out of the car, you said
9 you saw a boulder and someone on the sidewalk; is
10 that correct?

11 A. Right.

12 Q. Can you describe that person on the
13 sidewalk?

14 A. It was a white female. I think she was a
15 little petite and I think she had some glasses or
16 something. I don't know. But she had blond hair,
17 she was a small body woman.

18 Q. Okay. And what was her physical description
19 at this point, was she standing, sitting, laying?

20 A. She was laying. Laid out on the cement.

21 Q. And did she appear to be injured?

22 A. Yes.

23 Q. And why do you say that, how?

1 A. There was blood.

2 Q. Where was the blood?

3 A. It was -- it looked like it was oozing out
4 of -- coming out from her head area to me.

5 Q. And did you at that point try to revive her
6 or do anything or did you see the woman and say,
7 Call 911?

8 A. No. I just seen the woman, you know, just
9 tried to do the right thing and tell her to call
10 911, you know. You know, you see somebody laying
11 down, you know, hurt, first instinct is to try and
12 get some help to them or whatever.

13 Q. Now, back in 1993, were you working back
14 then?

15 A. Was I working? I don't think I was.

16 Q. Okay. Do you remember that night, were you
17 guys partying, what were you doing prior to coming
18 upon this woman on the sidewalk?

19 A. I don't know. I think I was over at my
20 aunt's house, which who I was living on Russell
21 Street.

22 Q. And so had you been drinking, doing anything
23 over there?

1 A. No.

2 Q. So you're clear as to what you saw that
3 night?

4 A. Yes.

5 Q. And you indicated that you went up to your
6 buddy's house the next house over, right?

7 A. Right.

8 Q. By the time you came out, the police were
9 there?

10 A. Right.

11 Q. Did you talk to the police?

12 A. Yes.

13 Q. Do you remember giving them a statement or
14 did you just tell them?

15 A. Yes, same sort of -- same statement I just
16 gave basically.

17 Q. Basically the same thing? And did you see
18 who did this to the woman laying on the sidewalk?

19 A. No.

20 Q. And just one last question, this is 15 years
21 ago, right, I mean, 1993? How do you remember
22 that night in particular?

23 A. Well, anytime something that's major as a

1 human being laying there dead or hurt or something
2 like that, major, you have a tendency to kind of
3 remember that type of thing, you know. It is a --
4 it was a tragedy, you know, so -- but, you know,
5 like to put it all in perspective to remember
6 something, you know, of 15 years ago, you have to
7 really jog your memory and work it out, that's
8 what I just, you know --

9 Q. This is what you remember?

10 A. Yeah.

11 MR. LOISEL: Thank you, sir. Nothing
12 further.

13 THE WITNESS: Okay.

14 THE COURT: Just a minute. Cross?

15 MR. WINGATE: Yes, would like to
16 approach for the 16(B)(1)(g) motion.

17 (WHEREUPON THE FOLLOWING DISCUSSION WAS
18 HELD AT THE BENCH.)

19 MR. LOISEL: Judge, there are
20 inconsistencies but these reports were gone over
21 with the Defense Attorney on Friday and he took
22 notes on what these inconsistencies are, so he's
23 aware of what the inconsistencies are.

1 THE COURT: You seen the statement?

2 MR. WINGATE: I'm sorry?

3 THE COURT: Have you seen the
4 statement?

5 MR. WINGATE: I have two statements
6 purportedly from him and this one I would like to
7 see again.

8 MR. LOISEL: I showed it to you. You
9 looked at it on Friday.

10 MR. WINGATE: Mike, I can see it again
11 today. There is no problem. I made a motion.

12 MR. LOISEL: And you're aware of the
13 inconsistencies. This is my one copy of the
14 report. I can go make a copy.

15 MR. WINGATE: I don't need to have it.
16 I can just look at it. You can give it to the
17 Court and then --

18 MR. LOISEL: Well, which date, what
19 report, 11-9-06?

20 MR. WINGATE: '06, yes.

21 MR. LOISEL: Judge, if I may, if we're
22 going to do this, I don't want to have the jury
23 see me handing them reports because it makes me

1 look like I'm trying to hide something and he's
2 already seen this report, and now going over it
3 like there's some big conspiracy.

4 MR. WINGATE: Okay. And Your Honor,
5 I'll indicate there were some inconsistencies in
6 the statement shown to us by the State of Ohio.

7 THE COURT: Well, you can
8 cross-examine.

9 MR. LOISEL: Judge, want to address how
10 we're going to do -- if this is going to happen
11 in the future, I don't know, I mean --

12 THE COURT: Let's get done with this
13 witness and then we'll talk about it.

14 MR. LOISEL: Very well.

15 (WHEREUPON THE PRECEDING DISCUSSION AT
16 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
17 WERE HELD.)

18 - - -

19 CROSS-EXAMINATION

20 BY MR. WINGATE:

21 Q. Mr. Craig, you told the Prosecutor that when
22 you arrived over on Paxton and E Street that you
23 believed you were going to see Johnny Ham?

1 A. Yes.

2 Q. And that's who's house you were going to?

3 A. Yes.

4 Q. All right. And you did go into that house?

5 A. Yes.

6 Q. And you two left with your brother coming
7 out?

8 A. Well, we were -- we came out the door, the
9 police was there by that time, you know, something
10 like that. I guess they popped up and they were
11 all out there and so my car was in the front.

12 So in order for me to leave, they would
13 have to let me leave, but before I left, they
14 wanted -- they asked me what did I see and that's
15 what I told them on the statement, on the police
16 statement what I saw.

17 Q. Now, when you talked to the police, you
18 tried to be as truthful as possible?

19 A. Yes.

20 Q. And to give them as much accurate
21 information as possible?

22 A. Yes.

23 Q. All right. And as much detail as possible,

1 right?

2 A. I would imagine so.

3 Q. All right. And you talked to the police
4 again; did you not?

5 A. I believe I had a call or something like
6 that. I don't. . .

7 Q. You talked to this Detective right here?

8 A. Uh-huh.

9 Q. Did you come to the office?

10 A. When?

11 Q. When you talked to this Detective.

12 A. I'm saying when. Is there a date on that?

13 Q. Yes. November the 9th, 2006.

14 A. Yes.

15 Q. All right. Yes, what?

16 A. Yes, I think I did.

17 Q. All right. You came to his office?

18 A. Yes, or on the phone or something, but we
19 talked.

20 Q. Okay. And at that time when you talked to
21 him, you were trying to be as truthful as
22 possible?

23 A. Yes.

1 Q. And tell him as much details as possible?

2 A. Yes.

3 Q. And as accurate as possible?

4 A. Right.

5 Q. All right. And did you tell him that on the
6 night of December the 1st, 1993, that you were
7 inside the house with Scottie Burrell?

8 A. That's his home. That's why I said Scottie
9 Burrell, and at the time that he, in 2006, when he
10 popped that up at me, memory hadn't served me
11 correctly at that time.

12 Q. Okay.

13 A. Because it was so long ago. I didn't really
14 think too much about the questioning of Detective
15 Burg about this case.

16 Q. Detective Beavers.

17 A. Beavers.

18 Q. I understand all that, but you're not
19 listening to my question.

20 A. Okay.

21 Q. My question is did you tell him at that time
22 that you were inside a house with Scottie Burrell.
23 That's what I'm asking.

1 A. I may have.

2 Q. All right.

3 A. Because, like I said, Scottie was the owner
4 of the home, and --

5 Q. All right.

6 A. -- and so much going on.

7 Q. Right. But you didn't say I was inside a
8 home owned by Scottie Burrell. You said I was
9 inside a house with Scottie Burrell is what you
10 told him.

11 A. I may have.

12 Q. All right. You then also told him, or did
13 you tell him that you walked outside and then saw
14 a female lying on the ground --

15 A. Uh-huh.

16 Q. -- with a large rock next to her? Did you
17 tell him that?

18 A. I may have, but go ahead.

19 Q. Just hold on.

20 A. Okay.

21 Q. Now, as it relates to this time now, you're
22 saying -- or you just told this Prosecutor and you
23 told me that, you know, sometimes the memory fades

1 and you may not remember as well; do you recall
2 telling -- you have to answer.

3 A. Oh, yes.

4 Q. All right. So when you say that, you said
5 one thing back in December the 1st of '93. You
6 made another statement November 9th of 2006,
7 correct?

8 A. Yes.

9 Q. All right. And you're now going back to the
10 first statement that you said, what you told the
11 Prosecutor?

12 A. Right.

13 Q. You came back to your first statement?

14 A. Right.

15 Q. Did you then have an opportunity to review
16 your statement?

17 A. No. I had the opportunity to review my
18 memory though.

19 Q. Okay. So you didn't review it when you went
20 to talk to the detective in November?

21 A. No, not at that time because, like I said, I
22 wasn't that interested in trying to review my
23 memory on this case, because it wasn't -- it

1 wasn't -- I wasn't involved in it, so it wasn't no
2 big thing to me about trying to remember
3 everything.

4 So, when he came to me on that second
5 interview, I was just --

6 Q. Telling him anything?

7 A. Well, I was just answering as much as I
8 could to my -- the best of my recollection at that
9 time, but after I sat up and I thought about all
10 from that -- put the pieces together, all that --

11 Q. Uh-huh.

12 A. -- about my night and all that and
13 everything and the statement on the 9th on -- what
14 year was that?

15 Q. '93.

16 A. '93 would be the correct statement.

17 Q. Okay. And I just want to know this: After
18 you sat back and reflected on this and jogged your
19 memory. All right?

20 A. Uh-huh.

21 Q. And this after the statement in November of
22 2006, did you call this detective and say, Hey,
23 the stuff I told you about Scottie Burrell and

1 being in the house and walking out and seeing this
2 stuff is not right; did you do that?

3 A. I didn't see that statement. I don't even
4 remember, like I said, saying that to him like
5 you're putting it down on that second statement,
6 but I didn't call him, if that's the answer you
7 were --

8 Q. Right. That's the answer. That was my
9 question. After you told him what you told him on
10 November the 6th, you realized, like you said, you
11 didn't put any significance to it but you knew it
12 was different than what you said in '03, right --
13 I'm sorry -- '93?

14 A. Like I said, after like, after I put my mind
15 and got to thinking about, because it was a long
16 time ago, you know, so much things happening in my
17 life, you know, I've been to jail, all that, and
18 work, and out of town, you know. So that's
19 basically -- that first statement is basically my
20 what happened.

21 Q. Right.

22 MR. WINGATE: And may we approach?

23 THE COURT: Sure.

1 (WHEREUPON THE FOLLOWING DISCUSSION WAS
2 HELD AT THE BENCH.)

3 MR. WINGATE: I would indicate for the
4 record that we filed a motion for exculpatory and
5 impeachment materials as it relates to witnesses
6 pursuant to the rules of discovery. This witness
7 has just indicated from the witness stand that he
8 has been incarcerated. We have no idea for what
9 and I would like the record to reflect that we
10 were never provided that information by the State
11 of Ohio.

12 MR. LOISEL: That's correct. I can go
13 get a record run of this individual, if
14 Mr. Wingate wants it. At this point I don't
15 think it is consequential to his testimony, but I
16 would be happy to provide that.

17 THE COURT: Do you want to recall?

18 MR. LOISEL: I don't have any questions
19 for him. I can provide the record for him.
20 Well, it doesn't matter what I think. I don't
21 know what it's going to show.

22 MR. WINGATE: We would like to have the
23 prior record history, but we would also like the

1 right to recall him if necessary.

2 THE COURT: I would give you the right
3 to recall.

4 MR. WINGATE: All right.

5 (WHEREUPON THE PRECEDING DISCUSSION AT
6 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
7 WERE HELD.)

8 THE COURT: Anything else?

9 MR. WINGATE: Just one second. No
10 further questions.

11 THE COURT: Any redirect?

12 MR. LOISEL: No, Judge. Thank you.

13 THE COURT: You're excused. Thank you
14 very much. Your next witness?

15 MR. LOISEL: At this time the State of
16 Ohio calls Joe Niemiec, Sergeant Joe Niemiec.

17 THE COURT: Call Joe Niemiec.

18 - - -

19 SERGEANT JOSEPH NIEMIEC,
20 being first duly sworn by the Court, testified as
21 follows:

22 MR. WINGATE: Can we approach?

23 THE COURT: Would you give us your

1 name and spelling of your name, please?

2 THE WITNESS: Joseph, first name. Last
3 name Niemiec, N as in Nancy, I-E-M as in Mary,
4 I-E-C as in Charles.

5 THE COURT: Thank you.

6 MR. WINGATE: Your Honor, could we
7 approach for a second?

8 THE COURT: Yeah.

9 (WHEREUPON THE FOLLOWING DISCUSSION WAS
10 HELD AT THE BENCH.)

11 MR. WINGATE: The deputy has indicated
12 that Juror Number 2 was trying to get our
13 attention and no one has paid any attention. I
14 don't know what they want, but the deputy sheriff
15 indicated that Juror Number 2 has been trying to
16 get the attention of the parties.

17 MR. MCELROY: He has been looking toward
18 this way.

19 (WHEREUPON THE PRECEDING DISCUSSION AT
20 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
21 WERE HELD.)

22 THE COURT: Mr. Montague.

23 MR. MONTAGUE: Before we start this,

1 could I use the bathroom?

2 THE COURT: Yeah. Let's take a five
3 minute recess. Don't discuss the case, neither
4 form or express an opinion about the case. Let's
5 take five minutes.

6 (RECESS TAKEN.)

7 MR. LOISEL: Judge, may we approach?

8 THE COURT: Sure.

9 (WHEREUPON THE FOLLOWING DISCUSSION WAS
10 HELD AT THE BENCH.)

11 MR. LOISEL: Judge, now that the jury
12 is wanting to take a break, I wanted to see if we
13 could address the issue with respect to
14 Mr. Wingate asking the State for reports. I know
15 he's not doing it -- I don't think he's doing it
16 with any malice.

17 MR. WINGATE: No.

18 MR. LOISEL: I know he has looked at
19 these reports and was able to take notes on these
20 reports, however, the appearance of me handing
21 him a report up here at the bench when we're
22 calling a witness may be negative from the jury,
23 so I was wondering if the Court could guide us as

1 to how you want to proceed if, in fact, he wants
2 to look at these reports that he's already seen
3 and taken notes.

4 MR. WINGATE: The thing is this, Judge,
5 and from Defense standpoint normally the State
6 would provide copies, but that policy is over.
7 Yes, I take notes, but they are not verbatim
8 notes. That is my reason for asking the
9 Prosecutor to let me see the notes.

10 THE COURT: Well, the way the rule is
11 supposed to go is after the testimony, I'm
12 supposed to look at it, and I've never really
13 liked that rule because I don't know what -- you
14 guys know the case a lot better than I do and I
15 don't know what's inconsistent and what's not.

16 MR. WINGATE: Right.

17 THE COURT: The better rule is to have
18 modified open discovery and see where it is. You
19 want to take a recess before or at the end of
20 each witness's testimony, how do you want to do
21 it?

22 MR. LOISEL: I don't necessarily want
23 to take a recess, but I don't know. I just have

1 one copy and my trial notebook, and to hand that
2 over up here, as I said, I think it looks strange
3 to the jury and they -- I don't want to give them
4 any other thoughts. They are supposed to be
5 concentrating on the evidence, not me handing a
6 paper to the attorney at the bench. If we have
7 an opportunity during the next break, I can make
8 some copies so that I can hand them to the
9 Defense Attorney prior to.

10 THE COURT: That would be preferable.

11 MR. WINGATE: Yeah.

12 MR. LOISEL: Or if he makes a motion.
13 I don't -- if there are inconsistencies,
14 obviously he's allowed to get those reports. If
15 they are not, then we can deal with it at that
16 point.

17 MR. WINGATE: Well --

18 MR. LOISEL: Nine times out of ten, I'm
19 going to give him the report.

20 MR. WINGATE: If that's the situation,
21 fine, but it is not so much if there are
22 inconsistencies. I get to see the report and
23 argue whether or not there are inconsistencies.

1 MR. LOISEL: No. Technically the Judge
2 has to determine whether they are inconsistent.
3 And if I think --

4 MR. WINGATE: Then he ultimately makes
5 the decision.

6 MR. LOISEL: Right.

7 MR. WINGATE: But the rule says upon a
8 motion 16(B)(1)(g) --

9 MR. LOISEL: Right.

10 MR. WINGATE: -- the Court will get the
11 statements --

12 MR. LOISEL: Right.

13 MR. WINGATE: -- reports, with
14 Defense Counsel participating, which --

15 MR. LOISEL: With Defense Counsel and
16 the Prosecutor participating, and if the Court
17 determines that there is an inconsistent
18 statement, then you are allowed to have the
19 statement. No, you do not participate in the
20 actual --

21 MR. WINGATE: Yes.

22 MR. LOISEL: I have the rule right
23 there.

1 MR. WINGATE: But you just heard the
2 Judge say how would he know. We know the case
3 better, how would he know of any inconsistencies.

4 MR. LOISEL: You can ask the Judge when
5 he's reviewing the report as to whether or not he
6 would have just heard the testimony from the
7 witness. You can say, Judge, I think this is
8 inconsistent.

9 MR. WINGATE: How would I know if you
10 don't give me the reports?

11 MR. LOISEL: Then --

12 MR. WINGATE: I should see the report.

13 MR. LOISEL: The Judge is the one --

14 THE COURT: I've heard this argument
15 before.

16 MR. LOISEL: Judge, as I said, I'll
17 make copies. If I know that there are
18 inconsistencies and I don't disagree, I'll hand
19 them over. If I don't think there are
20 inconsistencies, then he's not, according to the
21 rules, allowed to have the reports until the
22 Court determines whether or not they are
23 inconsistent.

1 MR. WINGATE: Then to make sure that my
2 client gets his right to effective assistance of
3 counsel on every witness, I'll make a 16(B)(1)(g)
4 motion and we'll come up here and make a
5 determination. I don't think you have a right to
6 decide whether or not there are inconsistencies
7 to the --

8 THE COURT: I've never liked the rule,
9 but the --

10 MR. LOISEL: The rule states --

11 MR. WINGATE: Let's look at the rule
12 again.

13 MR. LOISEL: I can get it right now.

14 MR. WINGATE: I know the 30 years of the
15 interpretation of the rule wasn't that the
16 Prosecutor determines whether there are
17 inconsistencies.

18 THE COURT: I was a Defense Attorney,
19 I know.

20 MR. LOISEL: 16(B)(1)(g) indicates in
21 camera inspection of a witness' statement. Upon
22 completion of a witness's direct examination at
23 trial, the Court on motion of the defendant shall

1 conduct an in camera inspection of the witness'
2 written or recorded statement with the
3 defense attorney and prosecutor present and
4 participating, to determine the existence of
5 inconsistencies, if any, between the testimony of
6 such witness and the prior statement.

7 If the Court determines that there are
8 inconsistencies exist, the statement shall be
9 given to the Defense Attorney.

10 I'm not arguing that you aren't allowed
11 to be part of the process, but the Court is the
12 one that determines if there are inconsistent
13 statements.

14 MR. WINGATE: I never disagreed with
15 that.

16 MR. LOISEL: You are asking for the
17 statement prior to me -- the Judge determining if
18 there are inconsistencies and that's not the
19 proper procedure.

20 MR. WINGATE: And it is not the proper
21 procedure that you decide whether there are
22 inconsistencies.

23 MR. LOISEL: Yes, it is. We give it to

1 the Court.

2 MR. WINGATE: You're right, Mike. Okay?
3 But the fact of the matter is, there is no
4 effective participation by Defense Counsel to
5 argue whether or not there are any
6 inconsistencies in the report if the Court looks
7 at it and Defense Counsel doesn't have an
8 opportunity to look at it.

9 MR. LOISEL: I understand that. Take
10 that up with the legislature. That's the way the
11 rule reads. Just because you don't like it,
12 doesn't mean it is wrong. You understand what
13 I'm saying?

14 MR. WINGATE: I understand what you're
15 saying. You feel you're not going to give me a
16 report because you don't think there are any
17 inconsistencies, then I'm going to object, we'll
18 be at the counter -- at the bench, I'm sorry.

19 MR. LOISEL: What started this whole
20 thing is I don't want to have to come up, and I
21 don't think it's proper in front of the jury for
22 me to be handing him reports up here because it
23 has the impression that the State is attempting

1 to hide information from the Defense Counsel,
2 when in all actuality he's looked at these
3 reports and taken notes. So, that's what my
4 query is, how does the Court wish us to proceed.

5 THE COURT: We can stop, you know. It
6 is really going to affect the flow of the case,
7 but you want to follow the rule, we will.

8 MR. LOISEL: Well, as I indicated, he
9 can make his motion and the State feels there are
10 inconsistencies, of course I'll give him the
11 reports, but if the State doesn't, then have in
12 camera inspection and go through the proper
13 procedures I guess.

14 THE COURT: All right.

15 MR. WINGATE: All right. Oh, I'm sorry.
16 Ancillary to that, we would renew our motion that
17 the entire file belonging to the Prosecutor be
18 made and placed under seal to be a part of the
19 record in this case. If there's an appeal --
20 inasmuch as the State is going to determine there
21 are inconsistencies, I've had too many cases or
22 aware of too many cases that have been sent back
23 by the Appellate Court relative to the State not

1 providing information to Defense Counsel. So, if
2 the State is going to take a line of reasoning,
3 then we would renew our motion and ask the Court
4 to reconsider having the State make a copy of its
5 entire file and placed under seal with the Court.

6 MR. LOISEL: Judge, we've responded to
7 that motion. I believe the Court has ruled on
8 that motion. The State is not determining
9 whether there are inconsistent statements. The
10 Judge will be determining that. So, I would
11 like -- I mean, you misstated what would happen.

12 THE COURT: Your motion is in the
13 record.

14 MR. WINGATE: All right.

15 (WHEREUPON THE PRECEDING DISCUSSION AT
16 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
17 WERE HELD.)

18 (RECESS TAKEN.)

19 THE COURT: Mr. Loisel, you may
20 proceed.

21 MR. LOISEL: Thank you, Judge.

22 - - -

23

1 DIRECT EXAMINATION

2 BY MR. LOISEL:

3 Q. Good morning, Sergeant. Could you introduce
4 yourself to us, please?

5 A. Sergeant Joseph Niemiec, Toledo Police
6 Department.

7 Q. And, Sergeant, obviously you're employed
8 with the Toledo Police Department. How long have
9 you been a member of the Toledo Police?

10 A. In about a week it will be 25 years.

11 Q. 25 years, congratulations. Now, you're a
12 sergeant. Explain what your duties are presently.

13 A. I'm a supervisor on the midnight shift. If
14 there is a question about how a patrolman should
15 proceed, they call me. If a major incident that
16 needs coordination of more than two police units,
17 they call me. I have the same function as any
18 other police officer on the street. I can make
19 arrests, I can write tickets, and in addition to
20 that, I'm the officer supervisor. If there is a
21 complaint, I'll handle that.

22 Q. Now, I guess I got ahead of myself. 25
23 years ago, can you explain to us what you did,

1 your education to become a police officer?

2 A. Start High School class of '73; Bachelor's
3 Degree of Administration from the University of
4 Toledo, 1981. I spent six months in the Police
5 Academy, worked with several senior officers,
6 learned how to be a policeman.

7 Q. Is that when you joined the Toledo Police
8 Department?

9 A. In 1983.

10 Q. Okay. Did you work in any other departments
11 prior to '83?

12 A. No, sir. I was a dock foreman.

13 Q. All right. Now, in 1983 -- have you always
14 been a sergeant?

15 A. No. I was promoted to sergeant 10 years
16 ago.

17 Q. And prior to 10 years ago, what were your
18 duties?

19 A. I was a patrol officer, uniformed patrol. I
20 spent my entire career in uniform patrol.

21 Q. Okay. So, back in 1993, were you a
22 uniformed patrol officer?

23 A. Yes, sir, I was.

1 Q. And do you recall responding to an incident
2 on or about December 1st of 1993 in the area of
3 Paxton and E Street here in Toledo?

4 A. Yes, sir. I responded to a woman down with
5 my partner at the time, Robert Schroeder. We
6 responded to a woman down at Paxton and E. We
7 arrived about seven or eight minutes, thereabouts,
8 after we received the call. Detective Phil Cashen
9 beat us there by about a minute according to the
10 call logs. We found a woman lying on the sidewalk
11 at that location. She looked to be bleeding from
12 head injury. She was unresponsive. We conducted
13 what investigation we could and I wrote the crime
14 report of that incident.

15 Q. Now, when you say you responded to a woman
16 down, what does that mean when you hear "a woman
17 down"?

18 A. It could be anything. A woman down could be
19 anything from a street person taking a nap, to a
20 drunk who passed out, to a victim of a serious
21 crime.

22 Q. In this particular case, it was the latter?

23 A. Latter. It appeared to be a victim of a

1 serious crime. A woman was, as I said, lying on
2 the sidewalk, unresponsive, bleeding from what
3 appeared to be a head injury. Near the body was a
4 rock that they -- that one of the detectives
5 found.

6 MR. WINGATE: I will object as to what
7 any other detective did.

8 MR. LOISEL: Your Honor --

9 THE COURT: He can testify to what he
10 observed.

11 A. A detective found and pointed out blood on a
12 rock.

13 Q. Officer, did you see a rock at the scene?

14 A. There were several. The incident in
15 question happened right near the intersection of
16 Paxton and E. The rocks were in a line diagonal
17 from the corner of the house to the street corner.
18 The easiest way to describe it to the jury is like
19 tank traps, so if a car couldn't cut the corner
20 too short, they would run over the rocks. It is
21 like for keeping people off your lawn. And one of
22 the rocks apparently was moved and had blood stain
23 on it.

1 MR. WINGATE: Your Honor, I would
2 object. That is speculation.

3 THE COURT: I think it is allowable.
4 Overruled.

5 Q. So you saw a rock, you saw a woman. What
6 was the race of this woman?

7 A. Caucasian.

8 Q. And approximately do you remember her size?

9 A. A small woman.

10 Q. And you said she was unresponsive?

11 A. Yes, sir.

12 Q. And approximately how long did she remain at
13 the scene, if you recall?

14 A. Time enough where we would get the fire
15 department there, a life squad there to pack her
16 up and get her gone. Less than 20 minutes.

17 Q. Do you recall the identity, or did you ever
18 learn the identity of a woman on the sidewalk?

19 A. Brenda Navarre.

20 Q. And do you know what happened to
21 Brenda Navarre?

22 A. I was told --

23 MR. WINGATE: I will object.

1 THE COURT: Yeah, that wasn't the
2 question. Sustained.

3 Q. Do you know what happened to Brenda Navarre?

4 A. She died.

5 MR. WINGATE: Your Honor, I will object
6 unless he knows from his personal observation,
7 not what someone told him.

8 MR. LOISEL: The question was do you
9 know what happened.

10 THE COURT: I'm going to allow it.
11 Overrule it.

12 Q. Now, did you -- upon your arrival you said
13 Detective Cashen beat you by about a minute?

14 A. Yes, sir.

15 Q. Now, once you arrived, did you see anyone
16 else at the scene?

17 A. There were the people I talked to, I talked
18 to a Mr. Sandifer and I talked to a Mr. Craig.
19 Mr. Sandifer lived at the second house off the
20 corner, 1229 Paxton. Mr. Craig was coming to
21 visit Mr. Sandifer and he was the one who
22 discovered the woman on the sidewalk and had
23 Mr. Sandifer call us.

1 MR. WINGATE: Objection. Your Honor,
2 this is well beyond him testifying what Mr. Craig
3 was going to do or what Mr. Sandifer was going to
4 do. That is nothing -- that is impermissible.
5 May we approach?

6 MR. LOISEL: Judge, what's the
7 objection?

8 MR. WINGATE: I'll tell him at the
9 bench. I don't want to argue in front of the
10 jury.

11 THE COURT: I'm going to allow it.
12 This is relevant background information at this
13 point. You'll have an opportunity to certainly
14 on cross-examination. Overruled.

15 Q. So you talked to a couple of witnesses at
16 the scene?

17 A. Yes, sir.

18 Q. And you made a report with respect to that?

19 A. Yes, sir.

20 Q. And what, if anything, else did you do at
21 the scene that night?

22 A. Assisted whatever -- it was 15 years ago.
23 And my memory isn't perfect. If the detectives

1 wanted me to do anything, talk to anyone, see
2 anything, do anything, after the detectives arrive
3 on the scene, they are in charge, and I'm their
4 servant and I do what I'm told and if they said
5 hold the flashlight here, measure this, do that,
6 that's what I do.

7 Q. So --

8 A. And --

9 Q. Once detectives get on the scene, you kind
10 of take orders at least back in 1993 that were
11 your duties, correct?

12 A. Yes, sir, even a sergeant, after a detective
13 gets on the scene, he's still in charge.

14 MR. LOISEL: Judge, may I approach the
15 witness?

16 THE COURT: All right. Use numbers
17 for State's exhibits and letters for Defendant's
18 exhibits.

19 Q. Sergeant, I'm going to hand you what's been
20 marked as State's Exhibit 1. Can you take that
21 look at that for me?

22 A. Yes, sir.

23 Q. Now, is that picture familiar to you?

1 A. Yes, sir. It is what we refer to as the
2 crime scene.

3 Q. What does that picture show?

4 A. It shows a blood stain on the sidewalk. It
5 shows a rock near the blood stain. It shows other
6 rocks in proximity to the house in the diagonal
7 pattern that I tried to talk about. The only
8 thing I could tell you that you can't tell from
9 the picture is --

10 MR. WINGATE: I will object to you
11 showing the picture to the jury.

12 A. The only thing I can tell you --

13 THE COURT: Qualify.

14 A. Only thing you can't tell from the picture
15 is the distance from the sidewalk to the house is
16 probably less than 15 feet. It's a relatively
17 small area. It's close to the houses.

18 Q. Everything is in close proximity?

19 A. Yes.

20 Q. And you described earlier you said like the
21 rocks just so the cars don't drive up on the lawn.
22 Does that picture accurately reflect the scene as
23 you remember it back in 1993?

1 A. Yes, sir.

2 MR. LOISEL: Thank you, Sergeant.

3 Nothing further.

4 THE COURT: Cross.

5 - - -

6 CROSS-EXAMINATION

7 BY MR. WINGATE:

8 Q. Sergeant Niemiec, do you know what time you
9 arrived at that scene? I know you told the
10 Prosecutor seven eight minutes after you had
11 gotten the call.

12 A. According to my report, the call came in at
13 2:02. I believe the report states that I arrived
14 at 2:09.

15 Q. Okay.

16 A. 2:08 because Phil Cashen arrived at 2:07 and
17 I was one minute later.

18 Q. All right.

19 MR. LOISEL: Judge, is that a.m. or
20 p.m.?

21 THE COURT: That would be a.m.

22 MR. LOISEL: Thank you.

23 MR. WINGATE: No questions. No further

1 questions.

2 THE COURT: Officer, you are excused.

3 Thank you. Who is your next witness?

4 MR. LOISEL: Judge, can we approach on
5 the scheduling matter?

6 THE COURT: Sure.

7 (WHEREUPON A DISCUSSION AT THE BENCH WAS
8 HELD OFF THE RECORD.)

9 MR. LOISEL: State of Ohio calls Odetta
10 Scott. They're bringing her down right now,
11 Judge.

12 - - -

13 ODETTA SCOTT,
14 being first duly sworn by the Court, testified as
15 follows:

16 THE COURT: Give us your name and a
17 spelling of your name, please.

18 THE WITNESS: Odetta Scott, O-D-E-T-T-A,
19 S-C-O-T-T, O-D-E-T-T-A, S-C-O-T-T.

20 THE COURT: Thank you.

21 - - -

22

23 DIRECT EXAMINATION

1 BY MR. LOISEL:

2 Q. Good morning, Ms. Scott.

3 A. Good morning.

4 Q. Ms. Scott, do you live here in Toledo?

5 A. Yes.

6 Q. And how long have you lived here?

7 A. All my life.

8 Q. And I know this is a dangerous question, but
9 how old are you?

10 A. 47.

11 Q. So you've been here 47 years?

12 A. Yes.

13 Q. Now, where do you live presently?

14 A. 1834 Westland Gardens, Apartment 201.

15 Q. And how long have you lived at that address?

16 A. 17 years.

17 Q. So back in 1993 were you living at that
18 address?

19 A. No, I wasn't.

20 Q. Where were you living back in 1993; do you
21 remember?

22 A. 1115 Saint John.

23 Q. 1115 --

1 A. Saint John.

2 Q. -- Saint John? That's here in Toledo,
3 right?

4 A. Yes.

5 Q. Now, do you remember an incident in December
6 of 1993 on Paxton and E Street in Toledo?

7 A. Well, yes, it was late.

8 Q. When you say late, what do you mean, in the
9 day?

10 A. It was at night.

11 Q. Okay. So it was at night?

12 A. Yes.

13 Q. And tell us about what you remember from
14 that area on that night.

15 A. I remember somebody arguing. Me and my
16 friend was at -- me and my friend was out.

17 Q. So you and your friend were out and you said
18 you heard someone arguing. And where were you and
19 your friend when you heard this arguing?

20 A. We were on Paxton.

21 Q. And describe the argument. What did you
22 hear?

23 A. Cussing, B words.

1 MR. WINGATE: I'm sorry. Could you keep
2 you were voice up? I can't hear you.

3 A. Oh, hearing B words.

4 Q. What do you mean when you say B words?

5 A. Bitch.

6 Q. Anything else, did you hear anything else?

7 A. They told us to get away.

8 Q. Now, you heard arguing. Describe voices
9 that were arguing.

10 A. It was a lady and a man.

11 Q. Could you tell the race of either the lady
12 or man by their voices?

13 A. I think she was white he was black. I
14 didn't see no faces.

15 Q. Did you see any people where the argument
16 was coming from?

17 A. Yeah, at a glance because I had been
18 drinking that night.

19 Q. Okay. But you did happen to see the people
20 that were arguing?

21 A. I didn't actually see their faces, but I
22 heard it, me and her heard it.

23 Q. Okay. And you said you heard cussing and

1 the B word, and then what else did you hear?

2 A. That's it. We ran.

3 Q. You said you heard someone say get out of
4 here?

5 A. That --

6 MR. WINGATE: Your Honor, I'm going to
7 object to the leading nature of the question.

8 THE COURT: Sustained.

9 Q. What else did you hear?

10 A. Said go. We ran.

11 Q. Now, which individual, the male or female
12 said go?

13 A. The male.

14 Q. And you said -- I just want to make sure
15 we're clear -- you said it was a black male
16 voice --

17 A. Yes.

18 Q. -- and a white female voice?

19 A. Yes.

20 Q. Now, when you look, you said you glanced in
21 that direction, is that what you saw or do you not
22 remember?

23 A. Vaguely. I don't remember. It's been so

1 long ago.

2 Q. Okay. Now, if I handed you a report of a
3 statement that you gave an officer back in 1993,
4 would that refresh your recollection?

5 A. It might refresh my recollection, but
6 whatever I said or not, that's what it is.

7 MR. LOISEL: Judge, can I approach?

8 THE COURT: This is a case of past
9 recollection recorded; is that --

10 MR. LOISEL: Yes, Your Honor.

11 MR. WINGATE: May we approach?

12 THE COURT: Sure.

13 (WHEREUPON THE FOLLOWING DISCUSSION WAS
14 HELD AT THE BENCH.)

15 MR. WINGATE: You said you were going to
16 give her what?

17 THE COURT: Wants to give her her
18 statement to refresh her recollection.

19 MR. WINGATE: I just want to be sure
20 that it is not a police report narrative, and if
21 he's called a statement, I want to know whether
22 or not she's adopted it as a statement, because
23 I've had 20 arguments from the State of Ohio that

1 say if a police summary of what he said, and if
2 I'm not mistaken, in order for it to be a
3 statement of a particular witness, it has to be
4 that person's own statement and either she
5 adopted it or she authored it.

6 THE COURT: That's right.

7 MR. WINGATE: And if she did not do
8 that, then that is not her statement.

9 MR. LOISEL: Judge, the report
10 indicates --

11 MR. WINGATE: I would object.

12 MR. LOISEL: The report indicates that
13 Odett states, and then it goes into her
14 statement. I don't know what else the Court
15 wants from the report. It says Odett states the
16 man reached up and picked up a rock and dropped
17 it. That's her statement. It says interview of
18 Odett Scott.

19 MR. WINGATE: But she --

20 MR. MCELROY: But she has to author or
21 adopt.

22 MR. LOISEL: She can look at it.

23 THE COURT: She can look at it and she

1 cannot testify -- she cannot read it. She can --
2 she can't read it out loud. She can read it and
3 then she can -- you can ask her questions.

4 MR. LOISEL: Okay.

5 THE COURT: If she says it refreshes
6 her recollection.

7 MR. LOISEL: And, in fact, it is her
8 statement. That's I think what they're trying to
9 make their point.

10 MR. WINGATE: If it is, in fact, a
11 statement.

12 (WHEREUPON THE PRECEDING DISCUSSION AT
13 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
14 WERE HELD.)

15 BY MR. LOISEL:

16 Q. Now, ma'am, do you remember making a
17 statement to the police back in '93?

18 A. You showed me that yesterday. I remember
19 saying that statement but, like I said, I didn't
20 see no faces.

21 Q. But have you had an opportunity to look at
22 that statement, it would help refresh your
23 recollection of what you said, correct?

1 A. I already looked at it yesterday. It is not
2 going to change.

3 Q. Okay. Now, with respect to that statement,
4 what else do you remember from being at that
5 scene?

6 A. That's it.

7 Q. Well, you said the man said get out of here?

8 A. We left, we ran.

9 MR. WINGATE: Your Honor, I will object.
10 She said the man said go.

11 MR. LOISEL: Fine. I'll rephrase it.
12 The man said go. Is that the only thing you
13 heard the man say?

14 A. Yeah, we ran.

15 Q. And where did you go?

16 A. To 1115 Saint John.

17 Q. Is that back to where you were living?

18 A. Yes.

19 Q. Now, did you ever find out what happened
20 that night with respect to the argument that you
21 heard?

22 A. Did I ever find out what happened?

23 Q. Yes.

1 A. No.

2 Q. Now, with respect to the argument, did you
3 see -- what did you see? Describe to us what you
4 saw when you glanced over there.

5 A. I just saw people. I really couldn't see.
6 It was dark outside. It was like 3:00 o'clock in
7 the morning.

8 Q. I understand that. But I just want you to
9 describe to us what you saw. I understand it was
10 dark out.

11 MR. WINGATE: Your Honor, I'm going to
12 object as to being asked and answered. She said
13 she didn't see.

14 A. I couldn't see. It was dark and I was very
15 intoxicated.

16 Q. Okay. Did you see anything?

17 MR. WINGATE: Your Honor, I will object
18 as to asked and answered.

19 A. No, I'm sorry.

20 Q. And when you got back to Saint John's, what
21 did you do?

22 A. What did I do?

23 Q. Yes.

1 A. I went to bed.

2 Q. I'm sorry?

3 A. I went to bed.

4 MR. LOISEL: Okay. Thank you, ma'am.

5 Nothing further.

6 THE COURT: Any cross?

7 MR. WINGATE: Yes 16(B)(1)(g). May we
8 approach?

9 (WHEREUPON THE FOLLOWING DISCUSSION WAS
10 HELD AT THE BENCH.)

11 THE COURT: Want to take a recess?

12 MR. LOISEL: I'm sorry, Judge?

13 THE COURT: Do you want to take a
14 recess so we can look at the statement?

15 MR. LOISEL: This is another statement
16 that he's already had an opportunity to take a
17 look at it. I don't care. He can look. There
18 are inconsistencies.

19 MR. WINGATE: I'm sorry, there are what?

20 MR. LOISEL: There are inconsistencies,
21 but this is what I'm trying to avoid is me
22 handing him reports at the bench.

23 THE COURT: That's what I'm saying.

1 Take a recess if you want.

2 MR. LOISEL: Well, it's already here.

3 I'll go back and give him a blank copy.

4 THE COURT: All right.

5 (WHEREUPON THE PRECEDING DISCUSSION AT
6 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
7 WERE HELD.)

8 - - -

9 CROSS-EXAMINATION

10 BY MR. WINGATE:

11 Q. Ms. Scott, I really just have one question I
12 want to ask you, and it is relative to the Paxton
13 and E Street area where you were in. Okay?

14 A. Yes.

15 Q. And the question is this: Were you at that
16 time in 1993 going to the dope house of Scottie
17 Burrell, and you're not charged with anything,
18 you're not going to be charged with anything. We
19 just want to --

20 MR. LOISEL: Objection, Your Honor,
21 irrelevant.

22 THE COURT: It is assuming a fact not
23 in evidence at this point.

1 MR. WINGATE: No. It. All right. I'll
2 do it a different way.

3 Q. Do you recall telling a detective that you
4 were going to the dope house of Scottie Burrell on
5 Paxton; do you recall telling him that?

6 A. No, I don't. I do not recall using no
7 names.

8 Q. Okay. You may have said you were going to a
9 dope house, you just didn't use the name; would
10 that be fair?

11 MR. LOISEL: Objection, Your Honor.

12 THE COURT: Sustained.

13 Q. Do you recall saying that you were going to
14 a dope house but not mentioning a name?

15 A. Vaguely, yes.

16 Q. Okay.

17 MR. WINGATE: Thank you very much, no
18 further questions.

19 THE COURT: Any redirect?

20 MR. LOISEL: Can I just have a moment,
21 Judge, please?

22 - - -

23 REDIRECT EXAMINATION

1 BY MR. LOISEL:

2 Q. Ms. Scott, the Defense Attorney asked you if
3 you recall telling the detective that you were
4 going to the dope house, right? Do you remember
5 he just asked you that question?

6 A. Did he just ask me that question?

7 Q. Correct.

8 A. Yes, he did.

9 Q. Do you recall telling the detective anything
10 else?

11 A. It's been too long ago.

12 Q. So you don't recall, or it's been too long?

13 A. It's been too long, period.

14 Q. What's been too long?

15 A. For the incident that happened. I mean, I
16 don't know what I told. Whatever I said, whatever
17 you got is best with me. That's what -- I don't
18 know nothing else. That's -- I was very
19 intoxicated and I was high.

20 MR. LOISEL: Judge, at this point,
21 again, I would ask that this witness review her
22 statement to refresh her recollection.

23 MR. WINGATE: And, Your Honor, we would

1 object. She's -- may we approach?

2 (WHEREUPON THE FOLLOWING DISCUSSION WAS
3 HELD AT THE BENCH.)

4 MR. WINGATE: Your Honor, to get to the
5 point, he asked her on direct examination would
6 it refresh her recollection. She said no. She
7 said she had looked at it yesterday. She didn't
8 recall. He's repeating the question and it is
9 outside the scope of redirect examination because
10 I only asked one question.

11 MR. LOISEL: Judge, his question he
12 asked this witness was does she recall talking to
13 a detective and did she go to a dope house.

14 MR. WINGATE: That was one specific
15 question.

16 MR. LOISEL: And it revolves around
17 what she told the detective. She just indicated
18 I said what I said to the cops back then. I
19 think that it is fair game for the State to ask
20 her if her statement refreshes her recollection.

21 THE COURT: She's -- her testimony
22 stands. She doesn't recall what happened that
23 night. Let's go with that.

1 (WHEREUPON THE PRECEDING DISCUSSION AT
2 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
3 WERE HELD.)

4 MR. LOISEL: Thank you, ma'am. Nothing
5 further.

6 THE COURT: You may step down. Who is
7 your next witness?

8 MR. LOISEL: Judge, can we approach?

9 (WHEREUPON A DISCUSSION AT THE BENCH WAS
10 HELD OFF THE RECORD.)

11 THE COURT: We're going to take the
12 noon recess. We have some other scheduling
13 matters that we need to address, so we'll have
14 you back here at 2:00 o'clock. Do not discuss
15 this case among yourselves, nor with anyone else.
16 Do not allow anyone to discuss the case in your
17 presence. Neither form or express an opinion
18 about the case until the case has been submitted
19 to you. See you back here at 2:00 o'clock. In
20 recess.

21 (LUNCH RECESS TAKEN.)

22 (WHEREUPON THE FOLLOWING DISCUSSION WAS
23 HELD OUTSIDE THE PRESENCE OF THE JURY.)

1 THE COURT: Next witness is going to
2 be Ms. Wilson; -- Mrs. Wilson; is that correct?

3 MR. LOISEL: State's understanding that
4 at this time the Court wants to inquire with
5 respect to Rule 601 competency. That is my
6 understanding, Judge.

7 THE COURT: Right.

8 MR. LOISEL: Yes. She is available. I
9 can go get her. We're prepared to go forward.

10 THE COURT: Okay.

11 MR. WINGATE: Mike, before you go --

12 (WHEREUPON A DISCUSSION WAS HELD OFF THE
13 RECORD.)

14 MR. LOISEL: Judge, Mr. Frey is here if
15 the Court would like to proceed with the
16 initial --

17 THE COURT: Give me just a minute
18 here. All right. We're on the record and I
19 understand the next witness is Janet Wilson, who
20 is the, as I understand it, the spouse of the
21 Defendant Robert Wilson. She was appointed
22 separate counsel, Mr. Frey, to represent her on
23 the privilege issue. Mr. Frey is present in

1 court. And as I understand it, under 601(B), the
2 issue of competency first must be determined and
3 then if competency is established, the next
4 question deals with the question of immunity and
5 privilege and exception to that privilege. So,
6 at this point we're going to deal with the issue
7 of competency. Is Ms. Wilson here?

8 MR. LOISEL: She is, Judge. Just for
9 practical purposes, once she -- whether she
10 elects to testify or not testify, then she will
11 be free to go; is that my --

12 THE COURT: Well, was she going to be
13 your next witness?

14 MR. LOISEL: Well, I mean, not free to
15 go, but for the purposes of whatever argument we
16 may proceed on with respect to privilege or that
17 kind of thing, she doesn't need to be here for
18 that, does she?

19 THE COURT: Not unless her attorney
20 wants her here.

21 - - -

22

23 JANET WILSON,

1 being first duly sworn by the Court, testified as
2 Follows:

3 EXAMINATION

4 BY THE COURT:

5 Q. Will you give us your name, please?

6 A. Janet I. Wilson.

7 Q. Okay. Ms. Wilson, I understand that you are
8 the next witness that the State expects to call in
9 this case, and we have a few questions that we
10 need to ask of you at this time. One of these
11 questions deals with the issue of your competency
12 as a witness, and I have been told, and I am to
13 understand that you are currently the wife of the
14 Defendant Mr. Robert Wilson, the Defendant in this
15 case; is that correct?

16 A. Yes, sir.

17 Q. Are you still married to the Defendant?

18 A. Yes, sir.

19 Q. And do you understand, and I suspect that
20 you've been told by several people including your
21 own attorney, that there is a spousal immunity
22 privilege under Evidence Rule 601(B) that if you
23 wish not to testify against your husband, you can

1 make that election; do you understand that right?

2 A. Yes, sir.

3 Q. And do you at this time wish to waive that
4 privilege and that immunity and testify in this
5 case?

6 A. Yes, sir.

7 THE COURT: All right. Mr. Loisel, do
8 you have any follow-up questions you want to ask?

9 MR. LOISEL: No, Judge. As per case
10 law, I think the Court as a preliminary matter
11 must inquire and the Court's done that and the
12 answer has been clearly given, so there's nothing
13 further from the State, Judge.

14 THE COURT: Any follow-up questions?

15 MR. WINGATE: The only thing I would
16 follow up with is:

17 - - -

18 EXAMINATION

19 BY MR. WINGATE:

20 Q. Mrs. Wilson, in December of 1993 were you
21 married to Robert Wilson?

22 A. Yes, sir.

23 MR. WINGATE: Okay. And I know the

1 Court had inquired, but specifically as to that
2 time frame.

3 THE COURT: That's all we have at the
4 present time, if you will step out, please. All
5 right. The witness has indicated that she is
6 competent or is willing to testify, and the Court
7 will make a ruling that she is competent to
8 testify from her side of the equation.

9 The next question is whether the
10 Defendant will be waiving that or standing on his
11 rights as well. Do I understand, Mr. Wingate,
12 that your client is going to be objecting to this
13 witness's testimony?

14 MR. WINGATE: Yes, he is, Your Honor,
15 and he would be pursuant to statute I want to say
16 29 -- just one second -- 2945.42, we will be
17 asserting our spousal privilege relative to the
18 communications and acts during the course of this
19 marriage and coverture as it relates to
20 Mrs. Janet Wilson and Mr. Robert Wilson.

21 THE COURT: All right. We will need
22 her to commence her testimony; is that correct?

23 MR. LOISEL: I believe she would be the

1 State's next witness, that's correct, Judge.

2 THE COURT: And do we need to
3 establish, first, whether there is an exception
4 to the general rule as established by 2945.42?

5 MR. LOISEL: Well, I would leave that
6 up to the Court. Obviously the Defense has just
7 provided this case, the State v. Sandoval,
8 S-A-N-D-O-V-A-L. The State has had a moment just
9 to look at it. I haven't had a chance to read it
10 thoroughly. The State has case law according to
11 Sandoval. It appears maybe the Court should look
12 in camera as to what the testimony will be from
13 this witness and make a ruling at that point, but
14 I haven't had a chance to see if Sandoval is a
15 6th District Court -- 6th District Court case. I
16 have some State Supreme Court cases. I thought
17 we were going to do this at 2:00 o'clock, so I
18 have those cases downstairs.

19 THE COURT: I understand, Mr. Wingate,
20 you've got an arraignment in a capital case?

21 MR. WINGATE: Right across the hall,
22 Your Honor.

23 THE COURT: All right. We'll recess

1 these proceedings and recommence at 2:00 o'clock,
2 or as soon as you can get back.

3 (RECESS TAKEN.)

4 THE COURT: All right. We are on the
5 record. The Court has just found the next
6 witness, Ms. Janet Wilson to be competent. We
7 still have the spousal privilege issue, and it is
8 my understanding that the State is going to
9 assert is that some of the statements that they
10 wish to elicit from this witness have -- were
11 made in the presence of third parties; is that
12 correct?

13 MR. LOISEL: Well, that's one of the
14 contentions, Judge. There are others. I mean,
15 other reasons why the State feels some of this
16 testimony should be allowed.

17 THE COURT: Over and above the waiver
18 of privilege?

19 MR. LOISEL: Well, the Defendant is
20 asserting his privilege, and I think that -- I
21 mean, I can go through on the record what the
22 State from point A to point M where we think the
23 State should be allowed to adopt -- or allowed to

1 introduce certain evidence.

2 THE COURT: Ms. Wilson is here.

3 Ms. Wilson, you are still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: Sit up here. First of

6 all, want to make an argue at this point,

7 Mr. Loisel, or not?

8 MR. LOISEL: Well, Judge, I guess the

9 State is unsure how we're proceeding at this

10 point with the witness here.

11 THE COURT: What I intend to instruct

12 this witness is that any statements that she is

13 going to testify to that were made by the

14 Defendant had to have been made in the presence

15 of a third party, and any testimony or any

16 questioning that you would have would be the

17 establishment of that basis. That's what I would

18 propose to proceed.

19 MR. LOISEL: Okay. Well, that's

20 obviously one of the State's arguments, however,

21 what is determinative of a third party is one

22 issue that I think we need to address.

23 THE COURT: What is your contention?

1 MR. LOISEL: Well, Judge, the State
2 believes that this witness would testify as to a
3 car ride where they drove by the scene with the
4 Defendant at a late -- after -- I think the Court
5 is aware that one of the contentions is that the
6 Defendant and this witness drove around getting
7 rid of clothes that the Defendant wore during the
8 time of the murder.

9 THE COURT: All right.

10 MR. LOISEL: It is also the State's
11 belief that this witness will testify to the fact
12 that they drove, after they did this, by the
13 scene at Paxton where police were still present
14 as well as emergency personnel and third party
15 bystanders.

16 So, the State's argument is that that is
17 in the known presence of third parties. You can
18 inquire further of this witness as to the
19 proximity of these people, but I think that's
20 subject for the State to inquire when this
21 witness does testify.

22 THE COURT: Well, let's establish
23 first the parameters of the privilege. Just

1 reading over some of the cases that have been
2 provided, the most recent one that I've been
3 aware of is the State versus Sandoval case. The
4 privilege seems to include and encompass not only
5 oral communications, but also conduct; am I
6 correct?

7 MR. WINGATE: Yes.

8 MR. LOISEL: Judge, I would indicate
9 that, yes, after reading that case, it does
10 appear that some conduct is considered with
11 respect to the privilege, however, I think that
12 that case can be distinguished somewhat. I
13 understand that.

14 THE COURT: Let's get to it. Have you
15 read the Sandoval case?

16 MR. LOISEL: I did, Judge.

17 THE COURT: What's your comment?

18 MR. LOISEL: I think it is
19 distinguishable because what they ruled was
20 privileged and inadmissible at the 6th District
21 level was the fact that she drove the Defendant
22 to the murder scene and from the murder scene.
23 This case is different. Our case does not

1 involve driving him to or from the murder scene.
2 And the only driving around, and maybe it is not
3 going to be allowable, but the difference is
4 driving around with the Defendant and their
5 getting rid of clothes at various locations.

6 So, I think there is a distinguishing
7 factor from driving someone to and from a murder
8 scene as opposed to driving around with someone
9 getting rid of clothes where possible third party
10 is present.

11 I understand it is -- well, I would leave
12 it at that. I think there is a distinguishing
13 factor in that between the Sandoval case and the
14 case at bar.

15 THE COURT: Mr. Wingate.

16 MR. WINGATE: Your Honor, there is no
17 distinguishing matter in this case. I think the
18 circumstances and facts that are in this
19 particular case are on all fours with the
20 Sandoval decision. You're talking about the
21 spousal privilege applying to communications and
22 acts done within the coverture of the
23 relationship between husband and wife. As the

1 Prosecutor seems to make nice of the fact that,
2 well, in the Sandoval case the wife drove him to
3 and from the crime scene. I don't think it is
4 the act that the Court looked at, but it was the
5 relationship, understanding that you're talking
6 about husband and wife in a vehicle driving
7 around, that is what's protected under the
8 Sandoval decision. It doesn't matter whether she
9 drove him to the crime scene or away from the
10 crime scene, it doesn't matter if she drove him
11 around to various areas in the city to, as the
12 State is alleging, dispose of evidence of the
13 crime. The import of Sandoval is all the same,
14 that this is an act that is committed within the
15 coverture of the relationship and is thus
16 excluded because of the spousal privilege.

17 So, I think that even though the State is
18 trying to make an effort to distinguish Sandoval
19 from this case, State v. Wilson, this case is on
20 all fours with Sandoval, and the State v.
21 Sandoval ruled that these acts are excluded under
22 the spousal privilege.

23 THE COURT: Any response?

1 MR. LOISEL: Yes, Judge, if I may. If
2 you would read the Sandoval decision, I'm sure
3 you have, it indicates that based on all of these
4 facts, those include driving the Defendant to and
5 from the murder scene. It doesn't say based on
6 facts in general. It is based on all these
7 facts. So, I would beg to differ with
8 Mr. Wingate's interpretation of the facts and the
9 ruling in that case.

10 Secondly, Judge, you can look in the
11 Sandoval case where it relies on Rahman and
12 VanHoy. In -- if you give me just one moment.
13 In State v. VanHoy, it also indicates with
14 respect to the marital privilege that if what is
15 said or done by either spouse has no relation to
16 their mutual trust and confidence as husband and
17 wife, then the reason for secrecy ceases.

18 So, the case that they're relying on
19 relies on another case that says if what's said
20 or done doesn't matter for the mutual trust of
21 the relationship, then the reason for the secrecy
22 ceases. So, it is a double-edged sword with
23 respect to the Sandoval decision, Judge.

1 Additionally, in the Supreme Court in
2 State v. Mowrey, the State of Ohio adopted a
3 balancing test. State v. Mowery, 1 Ohio St. 3d
4 192: The balancing test to determine whether the
5 privilege against adverse spousal testimony
6 promotes sufficiently important interests to
7 outweigh the need for probative evidence in the
8 administration of criminal justice.

9 So, I think that the Court, along with
10 Sandoval case, along with VanHoy, needs to keep
11 that in mind that the Supreme Court of Ohio has
12 adopted this balancing test. Again, it says:
13 Whether the privilege against adverse spousal
14 testimony promotes sufficiently the important
15 interests to outweigh the need for probative
16 evidence in the administration of criminal
17 justice.

18 So, again, Judge, I think that the State
19 has it broken down into five separate acts, if it
20 may, as to how the night went with the Defendant
21 and his wife. She initially, and, again, this is
22 what the State intends this witness to testify
23 to, that initially he contacts her, asks her to

1 drive by the crime scene; she does that to go to
2 a house, the Defendant's sister's house where she
3 is said to be present; the witness will then
4 testify as to what took place at that house; they
5 then drove around getting rid of the evidence
6 from the earlier murder; they then drove back by
7 the scene and ultimately ended up at her son's
8 house where he was obviously present and they
9 stayed the night.

10 So, I understand that the Court is trying
11 to make sure that this witness doesn't testify to
12 things that are privileged, but I think needs to
13 keep in mind the balancing test as well as the
14 differences in the cases.

15 MR. WINGATE: Your Honor, I can only say
16 that I'm looking at Sandoval and it says
17 specifically: We agree with appellate that
18 Heather should not have been allowed to testify
19 as to driving appellant either to the El Rancho
20 restaurant or the river because they were alone
21 during that time and one can infer that appellant
22 intended those acts and communications to be
23 confidential.

1 It says that: As to the parking at the
2 gas station, though Heather testified that the
3 gas station was open and there were people
4 around, in this case even though people were
5 around, there is no evidence that these people
6 were anywhere near the side of the building where
7 Heather parked, that these people were around
8 when appellant returned to their car, or that the
9 presence of these people was known to appellant.
10 Privilege does not apply where an act or
11 communication done in the presence of a third
12 party competent to testify.

13 The Court went on to say that Heather
14 testified that it was dark, as it was in this
15 case, at the time. Based on all the facts, we
16 cannot say that appellant did not intend for his
17 acts to be confidential.

18 If the State is relying upon the fact
19 that they are riding around in the car, it is
20 late at night, it is just those two, it is dark
21 out, that is consistent with Sandoval. Any
22 communications occurring between the two at that
23 time would be excluded because of Sandoval. And

1 if the communications are excluded, then the acts
2 would also be excluded.

3 Based upon the information that the State
4 has provided us there's certain acts that were
5 comitted, according to the information provided
6 us by the State of Ohio, while Mrs. Wilson was
7 driving Mr. Robert Wilson around, certain acts
8 committed upon the I-280 bridge. Again, and she
9 said there must have been someone around to see
10 us. Light traffic. It doesn't hinge upon the
11 fact whether or not other people were around. It
12 depends upon whether or not there was an
13 expectation of privacy between Mr. Wilson and
14 Mrs. Wilson, and I'm saying that based upon the
15 case law enunciated in Sandoval by this 6th
16 District Court of Appeals, it would exclude what
17 the State is seeking to enter into evidence.

18 Your Honor, I will say it is my
19 understanding from the State that Mrs. Wilson got
20 involved in this matter from a phone call that
21 she allegedly received, and I'm going to assume
22 that it is a fact, that she received a phone call
23 from Mr. Wilson to come over to the sister's

1 house. That would be excluded. That is from its
2 inception that the spousal privilege would apply.
3 A phone conversation between husband and wife,
4 that would be excluded.

5 You then talk about observations that
6 would have been made or certain conduct done by
7 Mr. Wilson at the house of his sister, with the
8 sister being upstairs, and at least this witness
9 indicating in one of her statements that after or
10 as they were leaving, the sister came down and
11 said good-bye. Again, an expectation of privacy.
12 Spousal privilege applies. It would be excluded.

13 I think that there needs to be an inquiry
14 made so that we will know before we let this jury
15 hear what Mrs. Wilson has to say, because as to
16 the statements provided to us by the State of
17 Ohio, there is a great deal which is covered by
18 the spousal privilege and would be excluded under
19 the Sandoval test enunciated by the 6th District.

20 THE COURT: Well, I'll be honest with
21 you, ever since law school, which was back in the
22 Middle Ages I guess, I always understood that
23 privilege whether it is between penitent husband

1 and wife or whatever dealt with the relationship
2 rather than the conduct. And although I may not
3 be happy about it, I believe that privilege does
4 attach and is applicable in the present case
5 here, so I'm going to allow some questioning of
6 this witness at this time.

7 There is an exception, which is
8 recognized about statements that were made or
9 conduct that occurred in the presence of third
10 parties. You will be allowed to question this
11 witness to establish a basis for third party
12 presence, and the witness will be instructed and
13 hereby is instructed that any testimony she gives
14 with respect to statements made by the Defendant
15 or conduct that she observed by the Defendant
16 must have occurred in the presence of a third
17 party before she will be allowed to testify as to
18 those matters.

19 MR. LOISEL: I'm not sure what we're --
20 what are we doing right now, Judge?

21 THE COURT: I'm going to call the jury
22 back in and you will be allowed to question this
23 witness. You may proceed.

1 MR. LOISEL: Okay. I didn't know.

2 That's fine. Thank you.

3 THE COURT: All right.

4 (WHEREUPON THE PRECEDING DISCUSSION
5 OUTSIDE THE PRESENCE OF THE JURY CONCLUDED AND
6 THE FOLLOWING PROCEEDINGS WERE HELD.)

7 THE COURT: Members of the jury, at
8 this time you will hear the testimony of
9 Ms. Janet Wilson. You should be advised that
10 Ms. Wilson has participated in some testimony
11 prior to your presence here and she is currently
12 under oath. The State's attorney, you may
13 proceed with his examination.

14 MR. LOISEL: Judge, pursuant to the
15 Court's hearing that we just finished up, can I
16 just have a minute or two? I need to try to work
17 on this outline to proceed.

18 THE COURT: Sure.

19 - - -

20 DIRECT EXAMINATION

21 BY MR. LOISEL:

22 Q. Good afternoon, ma'am.

23 A. Hello.

1 Q. Keep your voice up. Could you introduce
2 yourself to us?

3 A. Janet I. Wilson.

4 Q. And I do this with everyone, Ms. Wilson.
5 How old are you?

6 A. 54.

7 Q. And do you currently live in Toledo?

8 A. Yes and no.

9 Q. In the area?

10 A. Yes.

11 Q. And do you know the Defendant Robert Wilson?

12 A. Yes, he is my husband.

13 Q. How long have you been married?

14 A. June 26, 1992.

15 Q. Is when you got married?

16 A. Yes.

17 Q. Was that here in Toledo?

18 A. Yes.

19 Q. And the person that you see in the courtroom
20 today, is that the same person that you married
21 back then?

22 A. Yes.

23 MR. LOISEL: Judge, I would ask just

1 that the record is clear that that is the same
2 individual.

3 THE COURT: Yes, it is in the record.

4 Q. Back in September of 2003 did you have an
5 opportunity to contact or meet with any Toledo
6 Police Department detectives?

7 A. Yes, I called the cold cases and I met with
8 Detective Forrester and like officer, black
9 officer. I always forget his name.

10 Q. Do you remember when this was?

11 A. All I know is sometime in September.

12 Q. Of 2003?

13 A. Yes.

14 Q. And without getting into specifics, why did
15 you contact them?

16 A. Because I don't know how to do it without
17 getting into specifics.

18 Q. Well, what did you contact them about?

19 A. The murder of Brenda Navarre.

20 Q. And why did you contact them about the
21 murder of Brenda Navarre, just to talk to them
22 about it?

23 A. Yes.

1 Q. And when you talked to them back in 2003,
2 did you explain to them what you knew?

3 A. Yes, I did.

4 Q. Now, did you have -- I guess -- let me ask
5 you this: When is the next time you had any
6 contact with the Toledo Police Department with
7 respect to the murder of Brenda Navarre?

8 A. I talked to Lou Vasquez in 2005.

9 Q. Now, you say Lou Vasquez, can you explain to
10 us who he is?

11 A. Is a detective, crimes on persons.

12 Q. For the Toledo Police Department?

13 A. Yes.

14 Q. And how long have you known
15 Detective Vasquez?

16 A. Probably since I was about 19.

17 Q. So you've known him for a long time?

18 A. Yes.

19 Q. Explain the situation, how you came in
20 contact with him to talk to him about the murder
21 of Brenda Navarre.

22 A. My grandson got beat pretty bad and he was a
23 detective on the case. I took my grandson down to

1 the police station to -- for a photo array so he
2 can make an identification of people that beat him
3 up, and at the time there was a bulletin board or
4 some kind of board with unsolved murders on it and
5 I asked him was Brenda Navarre's picture up there
6 because I didn't have my glasses on at the time.

7 Q. I'm sorry. I didn't hear. You asked him --

8 A. Was Brenda Navarre's picture up there.

9 Q. And was it?

10 A. No.

11 Q. Now, did you happen to talk to Lou Vasquez
12 or Detective Vasquez at that time about
13 Brenda Navarre's murder?

14 A. No, he just gave me a card.

15 Q. So that was in 2005?

16 A. Yes.

17 Q. And did you have an opportunity to talk to
18 Lou Vasquez after that?

19 A. Yes.

20 Q. And if you remember where did those
21 conversations take place?

22 A. I had a bar called Brewski's on Detroit and
23 Sunset, and there was altercations going at the

1 bar and he would come out about that and we just
2 had led into other conversations about this.

3 Q. Other conversations about what?

4 A. About the Brenda Navarre murder.

5 Q. And did you ever talk to him on the
6 telephone?

7 A. Yes.

8 Q. Now, at some point did you come downtown and
9 talk to Detective Vasquez?

10 A. Yes, I did.

11 Q. And if you know, was that -- well, strike
12 that.

13 What was your purpose for coming downtown
14 to talk to Detective Vasquez?

15 A. To make a statement about what I knew to --
16 there was a couple other people there, I don't
17 know who they were, a couple other detectives.

18 Q. When you made the statement?

19 A. Yes.

20 Q. And you wanted to tell them what you knew
21 about what?

22 A. About the murder.

23 Q. And what did that information revolve around

1 or who did it revolve around?

2 MR. WINGATE: I will object.

3 THE COURT: I'm going to sustain it.

4 Q. You came to give them information?

5 A. Yes.

6 Q. And so in June of 2005 you gave them that
7 information?

8 MR. WINGATE: Your Honor, I'm going to
9 object to the leading nature of the questions.

10 THE COURT: He's going to have to have
11 some leeway.

12 MR. WINGATE: All right.

13 THE COURT: But in June of 2005, is
14 that before or after that conversation at the
15 bar?

16 MR. LOISEL: That was after, as far as
17 I know.

18 THE COURT: When did the conversation
19 in the bar occur?

20 MR. LOISEL: I'm sorry, Judge?

21 THE COURT: When did the conversation
22 at the bar occur?

23 MR. LOISEL: I don't think there's any

1 specific time frame that this witness can
2 testify. I think it was around the time but
3 prior to June of '05.

4 THE COURT: All right.

5 Q. The conversations with Detective Vasquez
6 when he came to the bar and/or on the phone, did
7 those occur before or after this conversation you
8 had down at the police station?

9 A. They came before.

10 Q. And then you came down to the police
11 station?

12 A. Yes.

13 Q. And you made a statement with respect to
14 what you knew about Brenda Navarre's homicide?

15 A. Yes.

16 Q. And after that did you have an opportunity
17 to talk to any other members of the Toledo Police
18 Department?

19 A. Yes. Bart Beavers and Ted Forrester came
20 out to my house a couple times.

21 Q. And those are detectives with the Toledo
22 Police Department?

23 A. Yes.

1 Q. And what did they talk to you about?

2 A. The same thing, about Brenda Navarre's
3 murder.

4 Q. And you said they came out to your house a
5 couple of times?

6 A. Yes.

7 Q. Bart Beavers is the detective sitting right
8 here?

9 A. Yes.

10 Q. And you said Ted. Is it Steve Forrester?

11 A. Oh, yes.

12 Q. Detective Steve Forrester. It's okay.

13 Did you talk to Lou Vasquez any more
14 about the homicide?

15 A. Yes.

16 Q. And were those face to face, on the phone?
17 Or tell us about that.

18 A. Most of them was on the phone.

19 Q. Okay. Now, at some point during these
20 conversations, was there any information or
21 mention of -- well, strike that.

22 Did you have another opportunity to talk
23 to any detectives with respect to this case in

1 August of 2006?

2 A. Yes, I did.

3 Q. And can you explain to us where that took
4 place?

5 A. Well, the meeting, it took place downtown at
6 the Toledo Police Department.

7 Q. And who was that meeting with?

8 A. Steve Forrester. I don't remember who was
9 all there.

10 Q. Okay. And I guess let me ask you this: It
11 seems obvious, but I want to make sure the record
12 is clear, what was that conversation about?

13 A. Well, a little while prior to that at my
14 house on South Street, Steve Forrester was saying
15 that if I -- because I wouldn't go downtown to
16 make a statement because I was scared, and he said
17 that if I came down and made a statement that he
18 could give me \$5,000 dollars in Crime Stopper
19 money.

20 Q. Okay.

21 A. So then I went downtown, made my statement.
22 Then I asked him about a couple days later, maybe
23 that day, about the money and he said Oh, no, you

1 got to do more than that.

2 Q. Okay. Now, you indicated that you didn't
3 want to come downtown because you were scared.
4 What were you scared of?

5 MR. WINGATE: I will object.

6 THE COURT: Well, if she can answer
7 without revealing any communications or conduct
8 that she may have had with her husband, I will
9 allow her to answer.

10 Q. What were you scared of?

11 A. Repercussions.

12 Q. What do you mean "repercussions"?

13 A. Just about the whole case, if it was found
14 out that I was the one that brought this to the
15 attention of the Toledo Police Department.

16 Q. And was the fact that you were scared as a
17 result of a conversation with the Defendant?

18 MR. WINGATE: I will object. I will
19 object.

20 THE COURT: I understand your quandary
21 there, Mr. Loisel, but I'm going to have to
22 sustain that.

23 Q. With respect to this fear, what did the fear

1 revolve around you? Explain to us a little bit
2 more about this fear about coming downtown to make
3 a statement.

4 A. Well, I didn't -- I was scared of any
5 repercussions that could happen because, like I
6 said, I would be bringing this to the police's
7 attention. I don't know how else to explain it.

8 Q. Okay. And that is when Detective Forrester
9 indicated if you make a statement you get Crime
10 Stopper money?

11 A. Yes.

12 Q. And at some point, end of August 2006, you
13 make a statement?

14 A. Yes.

15 Q. And are you aware that at some point that
16 your husband was charged with murder?

17 A. Yes.

18 Q. And with that in mind, did you have
19 continuing conversations with the Toledo Police
20 Department or not?

21 A. I had a couple.

22 Q. And these conversations, what were they
23 pertaining to?

1 A. Well, the one I remember the most is if I
2 didn't testify against Robert that I was going to
3 be charged with a crime.

4 Q. And, in fact, were you charged with a crime?

5 A. Yes, I was charged with obstruction of
6 justice.

7 Q. And what does that crime revolve around,
8 what incident?

9 MR. WINGATE: I will object.

10 MR. LOISEL: Judge, how is this
11 objectionable?

12 MR. WINGATE: May we approach?

13 (WHEREUPON THE FOLLOWING DISCUSSION WAS
14 HELD AT THE BENCH.)

15 MR. WINGATE: Your Honor, what he wants
16 her to say is that this is revolved around the
17 fact that she had told the police that she drove
18 around with Robert and she disposed of evidence
19 from the crime, that is what the allegation of
20 obstructing justice is about and that is within
21 the purview of the spousal privilege.

22 MR. LOISEL: Judge, she's been charged
23 with a crime, she can testify as to why she's

1 been charged with a crime. I'm not asking her to
2 say specifically she drove around with her
3 husband, but it has to do with the murder of
4 Brenda Navarre.

5 THE COURT: You're in the box here.

6 MR. LOISEL: Judge, she can indicate
7 what the crime revolves around. She doesn't have
8 to get into specifics with respect to her husband
9 or the actions. She's charged with obstructing
10 justice with respect to the investigation of
11 Brenda Navarre. That is not part of any spousal
12 testimony.

13 MR. WINGATE: This is the problem, the
14 fact that she told you she was driving around
15 with him and disposing of property falls within
16 the spousal privilege. You charged her with
17 that, but it doesn't penetrate the spousal
18 privilege that's there. She can't testify to
19 that.

20 MR. LOISEL: Spousal privilege
21 doesn't -- the tentacles of spousal privilege
22 doesn't go back in time. She cannot testify as
23 to any spousal privilege here today. The fact

1 that she's been charged with obstructing justice,
2 she can testify to the fact that it has to do
3 with the murder of Brenda Navarre. There are no
4 specifics going to be given. It doesn't have to
5 do with -- anything with her husband.

6 THE COURT: I'm going to sustain the
7 objection. Hearsay exception is noted. I
8 understand your box.

9 (WHEREUPON THE PRECEDING DISCUSSION AT
10 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
11 WERE HELD.)

12 MR. LOISEL:

13 Q. So you're charged with obstructing justice
14 you testified; is that correct?

15 A. Yes.

16 Q. And if you cooperate, what is your
17 understanding with respect to that charge?

18 A. They're going to dismiss my charges.

19 Q. Now, prior to you being charged with this
20 obstructing of justice, did you have an
21 opportunity to meet with Robert Wilson's attorney?

22 A. Yes.

23 Q. And during the course of that meeting --

1 strike that.

2 What was that meeting about?

3 A. I was -- I didn't want Robert to know that I
4 was the one that contacted the police and when I
5 told them I was, I was trying to make myself a
6 cover story to stay on good terms with him, so I
7 came up with a story that said that I received a
8 letter. I came up with this myself that I
9 received a letter from him to another girl and I
10 was all upset, that's why I contacted the police
11 like I did.

12 Q. So, you told that to Attorney Wingate?

13 A. Yes, I did.

14 Q. And did you tell him that personally or was
15 that over the phone?

16 A. No, I told him that personally in his
17 office.

18 Q. And after you told him that, what else did
19 you tell him?

20 A. I -- Ronnie asked me was it true and I said
21 no.

22 Q. And when he says "was it true", what was he
23 referring to?

1 A. My statement about the letter that I
2 received and all that. He asked me was everything
3 true and I said no. He said Do you love Robert,
4 and I said Yes.

5 Q. So, I just want to make sure I have this
6 straight. You went to his office and told him a
7 story?

8 MR. WINGATE: Your Honor, I'm going to
9 object to the narration by the State and ask
10 questions.

11 THE COURT: Well, there's some leeway
12 under Rule 611 to get background information.
13 So, I'm going to allow some limited leading to
14 get the testimony out here.

15 MR. LOISEL: Thank you, Judge.

16 Q. What I want to make sure is you went down to
17 his office and told him this Dear John letter
18 story?

19 A. Yes.

20 Q. And when did you tell him that wasn't true?

21 A. When I finished with it in the same meeting.

22 Q. So during the same meeting -- that's what I
23 wanted to get to. So during that same meeting you

1 told him it wasn't true?

2 A. Yes.

3 Q. Was anyone else present during that meeting?

4 A. No.

5 Q. And what, if anything, did Mr. Wingate do at
6 that point?

7 A. We just -- I think we just left it like
8 that. I'm almost sure it was over.

9 Q. Now, did you have an opportunity to go back
10 to Mr. Wingate's office, or when is the last time
11 you had any contact with Mr. Wingate?

12 MR. WINGATE: Your Honor, I'm going to
13 object. May we approach?

14 (WHEREUPON THE FOLLOWING DISCUSSION WAS
15 HELD AT THE BENCH.)

16 MR. WINGATE: Ask that -- I think we've
17 already had a hearing on this matter as to any
18 relationship that was established with
19 Janet Wilson and relevant to a statement she gave
20 me. I think at this juncture the State's concern
21 was that it would put me in the posture of being
22 a particular witness or being a potential witness
23 in this case, and I think as far as relevancy, I

1 don't think this has any relevancy in this charge
2 against Robert Wilson.

3 MR. LOISEL: Judge, I would beg to
4 differ. Obviously we're all aware of the
5 previous hearing that we had. You said this is
6 going to be a big gray area once we get to trial
7 with respect to her contact with Attorney
8 Wingate. And I would also state for the record
9 that Attorney Wingate in his opening statement
10 referenced this letter. So I think we need to
11 have some latitude with respect to -- if I could
12 finish my statement.

13 MR. WINGATE: Go right ahead, Mike.

14 MR. LOISEL: Thank you. He referenced
15 this Dear John letter and that's all I'm doing
16 right now is eliciting testimony to explain this
17 Dear John letter that he talked about during his
18 opening statement.

19 MR. WINGATE: Then this is what you need
20 to talk to her about, because if you're asking
21 her about the stuff she said to me not being true
22 has nothing to do with the letter. The letter
23 was sent to Robert and given to Don Cameron.

1 That's what you can talk about.

2 THE COURT: I'm going to allow the
3 questioning at this point.

4 (WHEREUPON THE PRECEDING DISCUSSION AT
5 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
6 WERE HELD.)

7 BY MR. LOISEL:

8 Q. So with respect to this Dear John letter,
9 did you have more contact after that initial
10 meeting with Mr. Wingate?

11 A. Yes, I had contact two other times.

12 Q. And when did those occur?

13 A. I have no idea. One was with
14 Jeffery Helmick a couple weeks later after that.

15 Q. And where was that?

16 A. That was at Mr. Wingate's office.

17 Q. And do you remember where the third one
18 occurred?

19 A. Yes. It was -- I was in a rehab after a
20 knee surgery.

21 Q. And you had contact with Attorney Wingate?

22 A. Yes, he came there.

23 Q. Now, with respect to those two meetings,

1 what did they -- what were they centered upon or
2 what were they about?

3 A. The letter that I wrote -- the letter I said
4 Robert wrote, which he never wrote.

5 Q. So the meetings were about the supposed Dear
6 John letter?

7 A. Yes.

8 Q. And during those meetings what, if anything,
9 happened with respect to an affidavit?

10 A. Well --

11 MR. WINGATE: Your Honor, I'm going to
12 object to the leading nature of the question.

13 THE COURT: I'm going to allow it.

14 A. The one I had with Ronnie and Mr. Helmick, I
15 went over it again, the same letter lie that I
16 did, and Mr. Wingate said if I typed this up, will
17 you sign it. And I said yes then, but then a
18 while later when I was at the rehab, he came out
19 there and I wouldn't sign it because it was a lie
20 and I know it was a lie and I just couldn't sign
21 it.

22 Q. So how many times did you not sign the
23 affidavit? How many times was it offered to you

1 to sign?

2 A. That I said I would sign it once and then it
3 was offered to me once.

4 Q. And you refused to sign it?

5 A. Yes.

6 Q. And this all has to do with this supposed
7 Dear John letter, correct?

8 A. Yes.

9 Q. No other meetings with Attorney Wingate?

10 A. It was a three-way call, so another time,
11 but I can't imagine --

12 Q. Okay. And if you recall with respect to
13 that, do you remember the time frame when that was
14 happening?

15 A. In February of last year I had my surgery so
16 it was then.

17 Q. Okay. And if you recall, you indicated you
18 were arrested for obstructing justice?

19 A. Yes.

20 Q. Do you remember the time frame when that
21 took place?

22 A. That was last May.

23 Q. May of 2007?

1 A. Yes.

2 Q. From May of 2007 until today, have you had
3 any more contact that you can remember with
4 respect to the Toledo Police or Attorney Wingate?

5 A. Well, when I got arrested, after I got
6 arrested.

7 Q. I'm not interested in that information.

8 MR. WINGATE: I would object and ask
9 that she be allowed to answer the question. You
10 said subsequent to May of '07.

11 MR. LOISEL: Very well.

12 Q. You said when you got arrested. What
13 happened?

14 A. That before they arrested me, they took me
15 to the Toledo Police Department to --

16 Q. Who is they?

17 A. The marshals, the federal marshals came to
18 my job.

19 Q. And when you say they arrested you, just so
20 it is clear, what did they arrest you for?

21 A. Obstruction of justice.

22 Q. So, go ahead with your answer.

23 A. The marshals took me to the Toledo Police

1 Department and had a conversation with the police,
2 and then they took me to the jail, and then I
3 called Ronnie Wingate's office and I told him I
4 was -- wait a minute. I didn't call his office.

5 MR. WINGATE: I'm going to object as to
6 relevancy. The question was contact with TPD.

7 MR. LOISEL: No, Your Honor.

8 THE COURT: I'm going to allow this
9 line of questioning at this point.

10 Q. So you -- go ahead. Continue with what
11 you're saying, please.

12 A. Just that I was in jail and I needed to get
13 out.

14 Q. And so you had contact with Attorney Wingate
15 at that point is what you're saying?

16 A. Yes.

17 Q. And after that any more, that you can
18 remember, contact with either the Toledo Police
19 Department or Attorney Wingate?

20 A. When we had a meeting here after Court one
21 day, talked to Toledo Police Department about my
22 testifying and about making a deal on my
23 testimony.

1 Q. Okay. And, in fact, the same deal that we
2 already talked about that if you cooperate, in
3 fact, your understanding is what?

4 A. The same thing, that I would be -- but that
5 was going to be a second degree misdemeanor and I
6 was supposed to testify against Mr. Wingate, too.

7 Q. With all that in mind, what I would like to
8 do at this point is direct your attention back to
9 December 1st of 1993.

10 A. Yes.

11 Q. At that point were you married to
12 Robert Wilson?

13 A. Yes, I was.

14 Q. And did you have contact with him on
15 Maher Street on the night or early morning of
16 December 1st, 1993?

17 A. Yes, I did.

18 Q. And explain to us how you went to that
19 address.

20 MR. WINGATE: I will object. I will
21 object.

22 THE COURT: Well, as long as she does
23 not implicate any contact she had or course of

1 conduct she had as a result of a conversation she
2 may have had with her husband, I'm going to
3 sustain it, otherwise she can testify.

4 Q. Where did you live at that point?

5 A. 4141 Hill Avenue.

6 Q. And where is Maher Street?

7 A. I'm sorry. I lived at 1017 Parkside.

8 Q. And where is Maher Street with respect to
9 Parkside?

10 A. No, the north end.

11 Q. And did you drive directly to Maher Street?

12 A. No.

13 Q. Explain the route that you took, please.

14 MR. WINGATE: I'm going to object, Your
15 Honor.

16 MR. LOISEL: Judge, this has nothing to
17 do with any conversation.

18 THE COURT: I'm going to allow the
19 question.

20 Q. Explain the route you took that night to
21 Maher Street, if you recall.

22 A. I drove -- I don't know how I got there, but
23 I drove via Paxton and then around to Maher.

1 Q. When you got to Maher Street, who was there?

2 A. Robert and then his sister was upstairs.

3 Q. And whose house is on Maher Street?

4 A. Robert's sister, Dorothy.

5 Q. And what is her last name?

6 A. Harris.

7 Q. Can you spell that for us?

8 A. H-A-R-R-I-S.

9 Q. Okay. And at any point when you were over
10 there, did you have contact with her?

11 A. We was getting ready to leave, she came down
12 and said bye.

13 Q. And what were you doing at this point when
14 you saw her?

15 A. Taking Robert some clothes.

16 MR. WINGATE: Your Honor, I'm going to
17 object. May we approach?

18 THE COURT: Yeah.

19 (WHEREUPON THE FOLLOWING DISCUSSION WAS
20 HELD AT THE BENCH.)

21 MR. LOISEL: Judge, I've established
22 that there was a third party. I don't know
23 what's the objection.

1 MR. WINGATE: The objection is as it
2 relates to the third party privilege as to who is
3 at the house. She said Robert was there and his
4 sister was upstairs and asked if anything
5 happened and she said the sister came downstairs
6 and said good-bye as we were leaving.

7 MR. LOISEL: Fine. If the objection is
8 for me to clarify. We'll clarify. The question
9 was at that -- my intention for the question was
10 at that point when the third party is knowingly
11 present, which destroys any privilege, what was
12 happening. I mean, I can phrase my question that
13 way if it is easier.

14 MR. WINGATE: She said she came down and
15 said bye as they were leaving. If you want the
16 talk about any observation, it wasn't about
17 bringing him any clothes, that would be within
18 the coverture of spousal privilege. The sister
19 is upstairs, they're leaving out the door.
20 That's what she said.

21 MR. LOISEL: Judge, I think the jury
22 and everyone can hear Mr. Wingate.

23 THE COURT: Sustained.

1 (WHEREUPON THE PRECEDING DISCUSSION AT
2 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
3 WERE HELD.)

4 Q. You indicated that the Defendant's sister
5 said bye. Where was she?

6 A. On the steps.

7 Q. And who were you with?

8 MR. WINGATE: I will object.

9 THE COURT: Sustained.

10 MR. LOISEL: Judge, may we approach?

11 THE COURT: No. I'm going to reverse
12 myself. I'm going to allow that question.

13 A. Robert and I were leaving out of his
14 sister's house.

15 Q. And at that point what did you have with
16 you?

17 MR. WINGATE: I will object.

18 THE COURT: I'm going to allow that.

19 Q. Did you have anything with you?

20 A. I didn't have anything.

21 Q. Did the Defendant have anything with him?

22 MR. WINGATE: Objection.

23 THE COURT: I'm going to allow it.

1 Q. What did the Defendant have with him?

2 A. A brown paper bag and a garbage bag.

3 Q. If you know, what was in the bag?

4 MR. WINGATE: I will object.

5 THE COURT: That's one step too far.

6 Sustained.

7 Q. At that point you left?

8 A. Yes.

9 MR. LOISEL: Judge, can I just have one
10 moment to check something?

11 Q. Where did you end up? You left the
12 Maher Street address?

13 A. Yes.

14 Q. Where did you end up that evening?

15 A. On South Street at my son Alfonzo's
16 apartment.

17 Q. And who did you go there with?

18 A. Robert.

19 MR. WINGATE: I would object.

20 THE COURT: I'm going to allow that
21 question.

22 Q. So, who was at that -- was anyone else
23 present at that place?

1 A. Alfonzo.

2 Q. So Alfonzo, yourself, and the Defendant?

3 A. Yes.

4 Q. What did you do when you were there?

5 A. We slept.

6 Q. Was Alfonzo aware that you were there?

7 MR. WINGATE: Your Honor, I will object.

8 THE COURT: Yeah, she doesn't know

9 what Alfonzo knew.

10 MR. LOISEL: Very well.

11 Q. Did you see Alfonzo when you were there?

12 A. Yes.

13 Q. So he was present?

14 A. Yes.

15 Q. What, if anything, did the Defendant do?

16 A. Took a bath.

17 Q. And you indicated that you stayed the night?

18 MR. WINGATE: Objection.

19 THE COURT: Yeah, this can be

20 construed as impinging on the spousal privilege.

21 I'm going to sustain it.

22 MR. LOISEL: Judge, if I may approach

23 and explain. Conduct is covered as well as oral

1 communications.

2 (WHEREUPON THE FOLLOWING DISCUSSION WAS
3 HELD AT THE BENCH.)

4 MR. LOISEL: Judge, I think it is clear
5 that a third party is present, it destroys the
6 privilege she just indicated.

7 THE COURT: You can ask her if he took
8 the bath in the presence of a third party.

9 MR. WINGATE: Your Honor, I'm going to
10 ask that any objections, could we please approach
11 the bench and discuss them as opposed to arguing
12 them in front of the jury?

13 THE COURT: Yeah.

14 (WHEREUPON THE PRECEDING DISCUSSION AT
15 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
16 WERE HELD.)

17 Q. At some point did you leave that residence?

18 A. Yes, in the morning.

19 MR. LOISEL: Thank you, Mrs. Wilson.
20 Nothing further.

21 MR. WINGATE: I'm sorry. Just one
22 second.

23 - - -

1 CROSS-EXAMINATION

2 BY MR. WINGATE:

3 Q. All right. Mrs. Wilson, do you mind if I
4 call you Janet?

5 A. No.

6 Q. We've known each other for a while; is that
7 correct?

8 A. Yes.

9 Q. Years as a matter of fact?

10 A. Yes.

11 Q. I want to start off by asking the first
12 question. There was never, ever a Dear John
13 letter in my office; is that correct?

14 A. Never.

15 Q. All right. What you're making reference to
16 is you talking to me, me taking notes and then
17 typing it up in the form of a statement; is that
18 correct?

19 A. Yes.

20 Q. All right. And as you said, I asked you
21 whether or not you would be willing to sign it; is
22 that correct?

23 A. Yes.

1 Q. You indicated that you would?

2 A. Yes.

3 Q. And you wanted to talk to your attorney
4 first?

5 A. Yes.

6 Q. And as it relates to that statement, you
7 underwent surgery for your knee?

8 A. Yes.

9 Q. This is after the conversation relative --
10 after the interview at my office after you had met
11 with -- and it wasn't Jeff Helmick, but it was
12 Mr. McElroy.

13 A. Oh, okay.

14 Q. Do you remember?

15 A. Yes.

16 Q. All right. Sometime after that you
17 underwent surgery for your knee?

18 A. Yes.

19 Q. And you contacted me to let me know where
20 you were?

21 A. Yes.

22 Q. At the rehab center?

23 A. Yes.

1 Q. And I said I would come see you; is that
2 correct?

3 A. Yes.

4 Q. And as it relates to that statement, I read
5 it back to you? You have to answer.

6 A. Yes, I'm sorry.

7 Q. And even though you said it was not true,
8 you even corrected some of the mistakes that were
9 in it; is that correct?

10 A. Yes, I did.

11 Q. All right. Things that I had put down
12 mistakenly and typed up, you said, No, that's not
13 right and corrected me?

14 A. Yes.

15 Q. Okay. Now, as it relates to your
16 involvement in this matter, two things. You were
17 paid \$5,000 dollars for a statement; is that
18 right?

19 A. Yes.

20 Q. Prior to you getting that \$5,000 dollars,
21 you hadn't made a statement; is that correct?

22 A. No, I had made statements.

23 Q. And that was to?

1 A. Just different detectives.

2 Q. Do you remember which detectives they were?

3 A. Bart Beavers.

4 Q. This (indicating)?

5 A. Yes.

6 Q. The one that was seated here?

7 A. Yes.

8 Q. Okay.

9 A. Steve Forrester, Lou Vasquez.

10 Q. All right. And now these statements that
11 you had made, you told them, I'm not coming down
12 to grand jury, right?

13 A. Yes.

14 Q. I'm not going to do that, right?

15 A. Yes.

16 Q. And you were informed that if you could get
17 an indictment, I have 50 crisp \$100 dollar bills
18 for you; is that correct?

19 A. Yes.

20 Q. Okay. You were having problems with your
21 bar, financial problems with Brewski's, right?

22 A. Yes.

23 Q. Financial need?

1 A. Yes.

2 Q. You saw this as a way to help yourself; is
3 that correct?

4 A. Yes.

5 Q. You have to answer for the record.

6 A. Yes.

7 Q. All right. So you decided that, okay, I'll
8 get the money?

9 A. Yes.

10 Q. Okay. Now, upon getting the money, you gave
11 a statement; is that correct?

12 A. Yes.

13 Q. After giving that statement, Mr. -- to the
14 grand jury, Mr. Wilson was indicted?

15 A. Yes.

16 Q. Now, I was not the first attorney to
17 represent him?

18 A. No.

19 Q. All right. As it relates to that other
20 attorney, you wrote a letter --

21 Now, when the Prosecutor is talking about
22 a Dear John letter, there is no such thing as a
23 Dear John letter; is that correct?

1 A. Yes.

2 Q. What happened was you wrote a letter to
3 Robert?

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. And I'll hand you what's been marked
8 composite -- I'm sorry. I would like to have this
9 marked as a composite exhibit.

10 THE COURT: A?

11 MR. WINGATE: Yep, Defendant's Composite
12 Exhibit A and it is consisting of five pages.

13 MR. LOISEL: Judge, at this point I
14 need to ask for a recess. This is the first time
15 I've ever seen this letter.

16 THE COURT: All right. Going to take
17 a 10 minute recess, members of the jury. You are
18 not to discuss this case nor form or express an
19 opinion about the case. We'll be in recess for
20 10 minutes.

21 (RECESS TAKEN.)

22 THE COURT: Please proceed.

23 BY MR. WINGATE:

1 Q. I'll hand you what's been marked for
2 identification purposes as Defendant's Composite
3 Exhibit A and ask you to look at that and see if
4 you recognize what that is.

5 A. This is a letter that I wrote after Robert's
6 indictment.

7 Q. And you wrote that letter -- you wrote that
8 letter saying that you had lied on Robert; did you
9 not?

10 A. Yes, I did.

11 Q. And you told him in that letter, did you say
12 that you had lied to the grand jury?

13 A. Yes, I did.

14 Q. And that you regretted it?

15 A. Yes, I did.

16 Q. Did you also tell him that it had hurt you
17 because you had gotten a letter that was intended
18 for a female by the name of Crissy?

19 A. Yes.

20 Q. And in that letter, talked about leaving you
21 to go with her?

22 A. Yes.

23 Q. And having kids?

1 A. Yep.

2 Q. All right. And as it relates to the
3 Prosecutor asking you questions, you're telling
4 this jury that that letter was a lie?

5 A. Yes.

6 Q. So that was not the truth?

7 A. No, it wasn't.

8 Q. Now, when you talked to me at my office, did
9 you tell me that Detective Forrester and
10 Detective Beavers had been coming by your house
11 wanting to get a statement?

12 A. Yes.

13 Q. Did you say that but that you weren't
14 interested in doing that so you kept putting them
15 off?

16 A. Yes.

17 Q. Did you tell them that -- or did you tell me
18 that you were -- kept playing up the fear factor
19 about how you were afraid and things like that?

20 A. I told you I was afraid.

21 Q. Okay. Did you also talk about the Crissy
22 letter with me?

23 A. Yeah, that's the letter we talked about.

1 Q. Okay. So, then did you say in that letter
2 to Robert, Hell hath no furry like a woman
3 scorned?

4 A. Yes, I did.

5 Q. Same thing you told me in the office,
6 correct?

7 A. Yes.

8 Q. At my office, did you tell me that
9 Detective Forrester said if you made a statement,
10 he would give you 50 crisp \$100 dollar bills?

11 MR. LOISEL: Objection, Your Honor.
12 It's been asked and answered.

13 MR. WINGATE: It's preparatory.

14 THE COURT: I'll allow it.

15 A. Yes.

16 Q. All right. Although you told the Prosecutor
17 what you said to me was not true, that was in the
18 statement that I wrote, right?

19 A. Yes.

20 Q. So that part of the statement was true?

21 A. Yes.

22 Q. You talked about owning Brewski's and having
23 financial problems with that on the verge of ruin.

1 Did you talk to me in the office about that?

2 A. Yes.

3 Q. That was also in this statement, wasn't it?

4 A. I don't remember.

5 MR. LOISEL: Judge, if we could have
6 that marked. I don't know what he's referring
7 to.

8 MR. WINGATE: I'll have it marked.

9 THE COURT: This will be Defendant's
10 Exhibit B?

11 MR. WINGATE: Yes.

12 Q. I refer you to -- hand you what's been
13 marked as Defendant's Exhibit B and ask you to
14 look at the second paragraph.

15 A. Yes.

16 Q. Okay. Now --

17 THE COURT: Why don't we identify that
18 letter as to what it is.

19 MR. WINGATE: Okay.

20 Q. And let me just ask a couple of preparatory
21 questions before we get -- when you talked to me
22 in my office, I took notes, correct?

23 A. Yes.

1 Q. And subsequently reduced those notes to a
2 typewritten statement, correct?

3 A. Yes.

4 Q. And Defendant's exhibit, what I just handed
5 you, does that represent the notes taken from my
6 interview?

7 MR. LOISEL: Objection, Your Honor.
8 How does she know what notes Attorney Wingate
9 took in his office?

10 MR. WINGATE: She knew what she told me.

11 MR. LOISEL: Is that a response?

12 MR. WINGATE: Yep.

13 THE COURT: She can testify as to what
14 it appears to be to her.

15 MR. WINGATE: Thank you.

16 A. This appears to be the interview.

17 Q. Okay.

18 A. With Mr. Wingate.

19 Q. Okay. Now, we were talking about the second
20 paragraph, Page 2. And the question that I asked
21 was, did you tell me that you were having
22 financial problems with your bar Brewski's on the
23 verge of ruin?

1 A. Yes.

2 Q. Was that true?

3 A. Yes.

4 Q. So that was true in this statement?

5 A. Yes.

6 Q. Okay. And I'll ask you to look at the third
7 paragraph. You talk about Detective Forrester,
8 \$5,000 dollars you testifying if you made a
9 statement and that's contained in this statement;
10 is it not?

11 A. Yes, it is.

12 Q. And did you tell me that?

13 A. Yes.

14 Q. That was true also, wasn't it?

15 A. Yes.

16 Q. Did you also tell me that you saw the \$5,000
17 dollars as an opportunity to help yourself
18 financially?

19 A. Yes.

20 Q. Okay. And that's in the statement?

21 A. Yes.

22 Q. That's also true, isn't it?

23 A. Yes.

1 Q. Did you tell me that on the day you went in
2 front of the grand jury that you were asked
3 about -- before you went in there, Detective
4 Beavers -- I'm sorry -- Detective Vasquez,
5 Beavers, Forrester and a Prosecutor were present,
6 did you tell me that?

7 A. Yes.

8 Q. That was true also, wasn't it?

9 A. They was sitting there?

10 Q. Yes.

11 A. Yes.

12 Q. And that was contained in the statement that
13 you gave me?

14 A. Yes.

15 Q. They wanted to talk to you about that
16 statement, but I think -- did you tell me you
17 asked Where is the money? Did you tell me that?

18 A. That wasn't when I went to the grand jury.
19 That was after I made a statement.

20 Q. Okay. And I'll ask you to look at the fifth
21 paragraph on Page 2.

22 A. That it was still made after that.

23 Q. That's fine. That's fine. At the time that

1 you're in front of the grand jury, were you asked
2 the question about testifying at that time and
3 about when you would get your money?

4 A. I knew it would be after that.

5 Q. I understand. But my question is did you
6 tell me that and is that contained in the report?

7 A. That's contained in the report.

8 Q. Okay. Now, the next question I have for you
9 is that the homicide of Brenda Navarre occurred in
10 1993; is that correct?

11 A. Yes.

12 Q. Okay. And from 1993 until 2003 when you
13 made the first contact or made a statement to a
14 police officer, there's been all kinds of talk in
15 the street about Brenda Navarre's homicide; had it
16 not?

17 A. Yes.

18 Q. And did you tell me that in your statement
19 about word on the street about that homicide, you
20 had heard a lot?

21 A. Yes.

22 Q. You heard, and let me just ask you this and
23 clarify it if I'm wrong: Word on the street was

1 that Brenda Navarre had been a snitch, correct?

2 A. Yes.

3 Q. And that's why she died, right?

4 A. Yes.

5 Q. Now, I'm going to hand you the document
6 again and ask you to look at the last paragraph.

7 MR. LOISEL: Which document are we
8 referring to?

9 MR. WINGATE: Defendant's Exhibit B.

10 Q. Top of the page.

11 A. Yes.

12 Q. Okay. As it relates to that, did you tell
13 me that at the grand jury you had asked about the
14 money from Crime Stopper. Did you tell me that?

15 A. But it was after.

16 Q. I said after the grand jury.

17 A. Oh, yes.

18 Q. Okay. You did tell me that?

19 A. Yes.

20 Q. That's in the statement?

21 A. Yes.

22 Q. That's true also, correct?

23 A. Uh-huh.

1 Q. Did you also tell me that you were told to
2 talk to Detective Forrester and you felt you were
3 being given the runaround?

4 A. Yes.

5 Q. That's in the statement?

6 A. Yes.

7 Q. That's also true, isn't it?

8 A. Yes.

9 Q. As it relates to your charge of obstructing
10 justice, you were charged with obstructing justice
11 at a hearing in this court where you indicated you
12 would not testify; is that correct?

13 A. Yes.

14 MR. LOISEL: Objection, Your Honor.

15 THE COURT: What basis?

16 MR. LOISEL: Relevance.

17 THE COURT: Overruled.

18 Q. As a matter of fact, this courtroom,
19 correct?

20 A. Yes.

21 Q. Okay. And you went home. And let me back
22 that up.

23 You were told if you didn't testify, they

1 were going to have you arrested, they were going
2 to put a high bond on you and they were going to
3 keep you in jail, didn't they?

4 A. Yes.

5 Q. That night were you arrested?

6 A. Yes.

7 Q. Were you kept in jail for a period of time?

8 A. Yes.

9 Q. You were then charged with obstructing
10 justice?

11 A. Yes.

12 Q. And that's what you were arrested for,
13 correct?

14 A. Yes.

15 Q. Felony of the third degree?

16 A. Yes.

17 Q. You're looking at one, two, three, four,
18 five years in prison; is that correct?

19 A. Yes.

20 Q. First deal that they offered you, the State
21 of Ohio reduced it down to a misdemeanor?

22 A. Yes.

23 Q. Second degree at most you would be looking

1 at, if you went to jail, would be 90 days,
2 correct?

3 A. I didn't know.

4 Q. Your attorney didn't inform you of that?

5 A. No.

6 Q. But as of today's date, upon you testifying,
7 your case is going to be dismissed?

8 A. Yes.

9 MR. WINGATE: Just one second, Your
10 Honor. I may be finished.

11 Q. Mr. Wilson has been incarcerated as a result
12 of the charge that was filed against him; is that
13 correct, Robert was arrested?

14 A. Yes.

15 Q. Yeah, charged with this offense.

16 Would it be fair to say that up until the
17 11th of August, 2008, that you have visited him on
18 a regular basis at the county jail?

19 A. Yes.

20 MR. WINGATE: Nothing further.

21 THE COURT: Redirect.

22 MR. LOISEL: Thank you, Judge.

23 - - -

1 REDIRECT EXAMINATION

2 BY MR. LOISEL:

3 Q. All right, Ms. Wilson -- Mrs. Wilson. With
4 respect to the letter, I believe it is Defendant's
5 Exhibit A, you never showed that to me, correct?

6 A. No.

7 Q. You didn't make a copy of it to keep,
8 correct?

9 A. No.

10 Q. So you and I didn't have an opportunity to
11 go through that letter line by line like you just
12 did with Mr. Wingate, correct?

13 A. No.

14 Q. Now, I want to talk to you about this what's
15 referred to as Defendant's Exhibit B. It is
16 entitled Interview of Janet Wilson. And
17 Mr. Wingate just went through it with you picking
18 out various facts that you indicate were true?

19 A. Yes.

20 Q. Correct?

21 A. Yes.

22 Q. Now, with respect to this, we could go
23 through it line by line, but there are statements

1 in this affidavit or this Interview of Janet
2 Wilson, whatever you want to call it, that are
3 incorrect; is that true?

4 A. Yes.

5 Q. Could you describe to us what portions of
6 that affidavit are incorrect?

7 A. I don't have it in front of me, I --

8 MR. LOISEL: Well, may I approach,
9 Judge?

10 THE COURT: Yes.

11 Q. Here. I'm going to hand you what's been
12 marked as State's -- Defendant's Exhibit B. Take
13 a look at that, if you would, please. And if you
14 could read over that first paragraph, please.

15 A. In 2003 --

16 MR. WINGATE: I would object.

17 Q. You don't have to read it out loud, but if
18 you could just read it over, please.

19 With respect to that paragraph, is that
20 entire paragraph true or false?

21 A. False.

22 Q. Can you read over to yourself the third
23 paragraph beginning with "prior to me calling."

1 A. False.

2 Q. So that paragraph is false?

3 A. Yes.

4 Q. What about the next paragraph?

5 A. It's true and false.

6 Q. Are we referring to the paragraph that
7 begins "In 2003"?

8 A. Yes.

9 Q. So, there's true and false in that
10 paragraph?

11 A. Yes.

12 Q. What is that paragraph talking about?

13 A. The girl, Crissy.

14 Q. So tell us what is true and false about that
15 information.

16 A. I didn't receive a letter, and Robert was
17 seeing a girl Crissy while he was on the streets
18 and while he was in jail.

19 Q. So some of that is true and some of it is
20 false?

21 A. Yes.

22 Q. How about the next paragraph beginning with
23 "I heard."

1 A. The first part the true.

2 Q. And what does the first part talk about?

3 A. About the talk in the streets about the
4 Brenda Navarre murder, the second part is false.

5 Q. What's the second part?

6 A. When it says I was lying to the police about
7 the murder. I did say the rest. I did add that
8 to my letter.

9 Q. So, I mean, we can go through the entirety
10 of that exhibit --

11 A. Yes.

12 Q. -- but let me ask you this general question:
13 With respect to the rest of that exhibit,
14 Defendant's Exhibit B, does it go along the same
15 lines as to what you just talked about, some true,
16 some false, some true, some false?

17 A. Yes, sir.

18 Q. And at any time did the Defense Attorney
19 Wingate ask you to sign that statement?

20 A. Yes.

21 Q. When did he ask you to sign that statement?

22 A. At the hospital -- at the rehab.

23 Q. So, he came out to the rehab center where

1 you were in February; is that correct?

2 A. Yes.

3 Q. Of 2007?

4 A. Yes.

5 Q. And he asked you to sign that affidavit?

6 A. Yes.

7 Q. Did you?

8 A. No.

9 Q. Why not?

10 A. Because it had some lies in it.

11 Q. So you refused to sign it?

12 A. Yes.

13 Q. Now, let's talk about Defendant's Exhibit A.

14 You're familiar with that. That's a letter you

15 wrote?

16 A. Yes.

17 Q. And who did you write that letter to?

18 A. I wrote it to Robert.

19 Q. With respect to what's true and what's false

20 about that letter, can you tell us is it entirely

21 true?

22 A. No.

23 Q. Is it entirely false?

1 A. No, it is not entirely false.

2 Q. I'm sorry?

3 A. No, it is not entirely false.

4 Q. So, again, same thing. Some of it has some
5 truism, some of it -- some false?

6 A. Yes.

7 Q. Now, Mr. Wingate asked you about some
8 meetings that you had with respect to Detective
9 Forrester and Detective Beavers where there was
10 some talk about the Crime Stopper money, correct?

11 A. Yes.

12 Q. When did you learn about Crime Stopper
13 money?

14 A. About the third or fourth time that
15 Mr. Forrester was over to the house.

16 Q. So you had testified earlier that that was
17 sometime in maybe 2005, 2006?

18 A. Yes, 2005.

19 Q. And let me just make sure. When did you
20 first talk to Sergeant Forrester about what you
21 testified earlier?

22 A. 2003.

23 Q. In 2003 you talked to him?

1 A. Yes.

2 Q. And when did you first then make your
3 statement to Detective Vasquez?

4 A. 2005. I think June.

5 Q. In June?

6 A. Yes.

7 Q. And was that consistent with what you had
8 told Detective Forrester?

9 MR. WINGATE: I'm going to object to the
10 leading nature, that's all.

11 THE COURT: I'll allow it.

12 A. Yes.

13 Q. So the statement you made to
14 Detective Vasquez in June of '05 was consistent
15 with what you had told Sergeant Forrester in 2003?

16 A. Yes.

17 Q. Had you been offered \$5,000 dollars in 2003?

18 A. No.

19 Q. When you made that initial statement in
20 2005, had you been offered \$5,000 dollars?

21 A. No.

22 Q. When you made those statements to
23 Sergeant Forrester and Detective Vasquez prior to

1 learning about the Crime Stopper money, what was
2 your intention with respect to testifying?

3 A. I -- could you repeat that?

4 (WHEREUPON THE RECORD READ BACK BY THE COURT
5 REPORTER.)

6 A. Well, I felt that Brenda's mother should
7 know.

8 MR. WINGATE: Your Honor, I'm going to
9 object.

10 MR. LOISEL: What basis?

11 MR. WINGATE: May we approach?

12 THE COURT: I'm going to overrule your
13 objection at this point.

14 MR. WINGATE: Okay.

15 Q. So you felt Brenda's mother should know.
16 Explain that statement. I'm not sure what you
17 mean.

18 MR. WINGATE: I'll object and ask to
19 approach, Your Honor.

20 THE COURT: She's already been joined
21 not to testify to any communications she may have
22 had with respect to her husband.

23 A. I felt she should know who -- should know

1 why her daughter was killed.

2 Q. Now, did you intend to testify when you
3 initially contacted the police?

4 A. No.

5 Q. What about the second time you talked to the
6 police, did you intend to testify?

7 A. No.

8 Q. Was your story the same when you talked to
9 them those first two times?

10 A. Yes.

11 Q. And eventually you went to grand jury; is
12 that correct?

13 A. Yes.

14 Q. And was your testimony consistent with what
15 you told us here today --

16 A. Yes.

17 Q. -- about what happened back in December of
18 1993?

19 A. Yes.

20 MR. LOISEL: Just one minute, Judge.

21 Thank you, Mrs. Wilson. Nothing further.

22 THE COURT: Any further cross?

23 MR. WINGATE: Yes.

1 CROSS-EXAMINATION

2 BY MR. WINGATE:

3 Q. You did not have an opportunity to discuss
4 that letter with Mr. Loisel because the letter was
5 first in possession of Mr. Cameron and then in my
6 possession; is that correct?

7 A. Yes.

8 Q. And you didn't have any copies of it; is
9 that correct?

10 A. No.

11 Q. As it relates to -- and the Prosecutor took
12 you through Paragraph 1, Paragraph 3, Paragraph 4,
13 Paragraph 5 of Defendant's Exhibit B, and you
14 responded to him by saying part true, part false;
15 is that correct?

16 A. Yes.

17 Q. All right. Matter of fact, you told him the
18 entire document is part true, part false --

19 A. Yes.

20 Q. -- is that correct?

21 You said the same thing about the letter
22 that you had written; is that correct?

23 A. Yes.

1 Q. Part true, part false --

2 A. Yes.

3 Q. -- is that correct?

4 And would it be fair to say that you have
5 the ability to put true and false statements
6 together to come up with a convincing story; would
7 that be true?

8 A. Yes.

9 Q. As a matter of fact, in that document, did
10 you say, "I used some of the information that I
11 heard in the streets and made up some details to
12 convince Lou I was telling the truth." Did you
13 tell me that?

14 A. I said that.

15 Q. And as far as the Prosecutor asking you why
16 did you finally decide to testify, we agree you
17 were paid \$5,000 dollars?

18 A. Yes.

19 Q. And you also indicated to the Prosecutor you
20 wanted the mother to know?

21 A. Yes.

22 Q. All right. And would it be fair to say that
23 for over a decade from 1993, it didn't matter

1 whether she knew or not? I'll rephrase the
2 question and ask it differently. Okay?

3 From 1994, '95, '96, '97, '98, '99, 2000,
4 2001, 2002, and a portion of 2003, you didn't come
5 forward with any information; is that correct?

6 A. No, sir.

7 Q. And finally as it relates to that statement,
8 the Prosecutor asked and you said that you refused
9 to sign that document because it was a lie; is
10 that correct?

11 A. Some of it was, yes.

12 Q. Some of it was, some of it wasn't?

13 A. Yes.

14 Q. But in talking to me you indicated you made
15 some corrections on it, that lie, you made some
16 corrections on it to make them accurate; is that
17 correct?

18 A. Yes.

19 Q. And you said you wanted to talk to your
20 attorney?

21 A. Yes.

22 Q. Okay.

23 MR. WINGATE: Nothing further.

1

- - -

2

FURTHER REDIRECT EXAMINATION

3

BY MR. LOISEL:

4

Q. Mr. Wingate dramatically ran off the years

5

from the time of --

6

MR. WINGATE: Objection.

7

THE COURT: I will allow it.

8

Q. From the time of the murder from 1993 to

9

2003. He asked why you didn't come forward from

10

'94, '95, '96, up until 2003 when you did finally

11

come forward. Why didn't you come forward

12

earlier?

13

MR. WINGATE: I don't think that was my

14

question.

15

THE COURT: I'll allow it.

16

A. I couldn't live with it no more. I didn't

17

come forward. It just -- it -- I just finally

18

couldn't live with it no more.

19

Q. Live with what?

20

A. The knowledge of a murder.

21

MR. LOISEL: Thank you. No further

22

questions.

23

THE COURT: Cross?

1 MR. WINGATE: Nothing further.

2 THE COURT: You are excused. Thank
3 you. Who is your next witness?

4 MR. LOISEL: Judge, if we could
5 approach on a scheduling matter.

6 (WHEREUPON A DISCUSSION AT THE BENCH WAS
7 HELD OFF THE RECORD.)

8 MR. LOISEL: Judge, may I just have two
9 minutes. This witness is a little out of order.
10 I need to get something.

11 THE COURT: All right. The jury can
12 stand up and stretch. We can take a little break
13 here.

14 MR. LOISEL: Sorry for the delay,
15 Judge. I apologize.

16 - - -

17 OFFICER ROBERT MALONE,
18 being first duly sworn by the Court, testified as
19 follows:

20 THE COURT: Please give us your name
21 and spelling of your name.

22 THE WITNESS: Robert A. Malone,
23 M-A-L-O-N-E.

1 THE COURT: Thank you.

2 - - -

3 DIRECT EXAMINATION

4 BY MR. LOISEL:

5 Q. Good afternoon, Officer.

6 A. Good afternoon.

7 Q. How are you today?

8 A. Great.

9 Q. Can you introduce yourself to the jury?

10 A. Ladies and gentlemen, I'm Officer Malone,
11 Toledo Police Department.

12 Q. And Officer Malone, how long have you been a
13 member of the Toledo Police Department?

14 A. 32 years.

15 Q. And in what capacity -- well, let me ask you
16 this: With respect to training and education, can
17 you give us a little bit of background as to going
18 up to or being a police officer?

19 A. Well, I went through a 20 week academy and
20 graduated that and we hit the street November
21 of --

22 Q. I'm sorry?

23 A. Hit the street in November of '76.

1 Q. November of '76?

2 And when you say you hit the street, you
3 were patrol officer or road officer?

4 A. Yes.

5 Q. I think it is clear, but explain to us what
6 a road officer does.

7 A. Respond to radio calls, calls from service
8 and citizens, traffic control, anything and
9 everything.

10 Q. And are you currently a road officer at this
11 point in time?

12 A. I'm assigned to the traffic section at this
13 time.

14 Q. And are you assigned to different sections
15 throughout your career or how does that work?

16 A. Yes. Throughout my career I was assigned to
17 field operations, which is the road patrol; and
18 went to background and recruiting; and went back
19 to field operations; and then I went into the
20 traffic section where I've been the last -- where
21 I've been the last 12 years.

22 Q. I'm sorry. What was that?

23 A. I've been there the last 12 years.

1 Q. Were you working for the Toledo Police --
2 obviously you were back in 1993, but were you a
3 member of the Toledo Police Department?

4 A. Yes, I was.

5 Q. What section were you back then?

6 A. Working field operations at that time, and I
7 was doing traffic injury accident investigation.

8 Q. Okay. And do you recall responding to a
9 scene at Paxton and E Street --

10 A. Yes, sir.

11 Q. -- on or about December 1st, 1993?

12 A. Yes.

13 Q. And is that here in Toledo, Ohio?

14 A. Yes, it is.

15 Q. And tell us what you remember about that
16 night.

17 A. Very little actually. It was so long ago.
18 It was cold and I was sent there to assist the
19 crews on the scene, the detectives, take
20 photographs of the crime scene.

21 Q. And do you remember taking photographs of
22 the crime scene?

23 A. Yes.

1 Q. And was that part of your duty as a road
2 officer, to help the detectives with respect to
3 taking photographs?

4 A. It was part of my duties as my assignment,
5 the tech's investigation. We were working
6 nightshift and normally at that particular time
7 they didn't have evidence techs working in the
8 evenings, so they used the accident investigators
9 if they just needed photographs of the crime
10 scenes taken.

11 MR. LOISEL: Judge, may I approach?

12 THE COURT: Yes.

13 MR. LOISEL: Let me put these back in
14 order. I apologize.

15 Q. Officer, with respect to that night, you
16 indicated that was a long time ago, right?

17 A. It was.

18 Q. Do you remember what the scene was back at
19 Paxton and E Street back in 1993?

20 A. Well, the thing that sticks out in my mind
21 was supposedly there was a felonious assault
22 involving a female victim and a large rock.

23 Q. Okay. And do you remember what the call was

1 that you responded to going to that scene?

2 A. My call was just an assist call.

3 Q. Okay.

4 A. That's all. I didn't even hear the original
5 call come in.

6 Q. So you get a call to assist and you respond
7 to that area?

8 A. Yes.

9 Q. Do you recall what you did when you got to
10 that scene that night?

11 A. I took the photographs.

12 Q. Okay.

13 A. And that was it.

14 Q. Okay. Did you talk to anybody?

15 A. No.

16 Q. Did you just --

17 A. Well, it was -- as far as police officers
18 were concerned? Yes, I talked to some police
19 officers.

20 Q. You didn't talk to -- interview any
21 witnesses or anything like that?

22 A. No.

23 Q. All right. Officer, I'm going to hand you

1 what's been marked as State's Exhibit 2 and I
2 would ask you to take a look at that and see if
3 you recognize that.

4 A. It looks like the rock that I took the
5 picture of that was lying --

6 Q. And that was from the scene back in 1993?

7 A. Yes.

8 Q. Officer, I'm going to show you what's been
9 marked as State's Exhibit 3. Can you take a look
10 at that for me, please.

11 A. That's a temporary parking restriction sign
12 for leaf pickup lying in the sidewalk. It appears
13 it was lying next to the large pool of blood on
14 the sidewalk.

15 Q. And do you recognize that photo?

16 A. Uh-huh.

17 Q. And is that fair and accurate representation
18 of what you saw back at that night in 1993?

19 A. Yes, it is.

20 Q. I'm sorry?

21 A. Yes.

22 Q. Okay. I'm going to hand you what's been
23 marked as State's Exhibit 4. Would you look at

1 that for me, please.

2 A. Large pool of blood lying beside the large
3 rock that's supposedly I was told that's where the
4 victim --

5 MR. WINGATE: I will object as to what
6 he was told.

7 THE COURT: Sustained.

8 A. Okay.

9 Q. Well, what do you see? What's in the
10 picture?

11 A. It is a large pool of blood and the large
12 rock taken together side by side.

13 Q. And that's, again, from the scene of Paxton
14 and E Street?

15 A. Yes, it is.

16 Q. Is that a fair and accurate representation
17 of what you saw that night?

18 A. To the best of my knowledge, yes.

19 Q. Okay. We're going to do this for each one.
20 State's Exhibit 5. Can you look at that for me.

21 A. This is a photograph of a large rock, large
22 rock is in the foreground, pool of blood is in the
23 rear. Same photograph at a different angle.

1 Q. And, again, do this for the record. Does
2 that appear to be substantially the same or the
3 same scene that you photographed back in 1993?

4 A. It appears to be, yes.

5 MR. LOISEL: May I have just a minute,
6 Judge?

7 Q. All right. Get to this a little quicker
8 now. Officer, I hand you what's been marked as
9 State's 6 through 11. If you would take a look at
10 those photos for me.

11 A. Number 6 shows a large pool of blood taken
12 lying on the sidewalk with the temporary no
13 parking sign in the rear.

14 Q. Okay. And 7?

15 A. 7 is a large rock sitting on a two-wheel
16 hauler. Appears to be the rock from the scene, I
17 guess.

18 Q. Okay. Number 8?

19 A. Is a different angle photograph of the same
20 rock.

21 Q. Number 9?

22 A. Same thing, same rock, different angle.

23 Q. Okay. Number 10?

1 A. Number 10 is a photograph of the large rock
2 at the scene before it was removed showing rock
3 only with blood spatters on it.

4 Q. And Number 11?

5 A. Number 11 is another picture photograph
6 depicting the blood and the large rock lying
7 together side by side.

8 Q. Side by side? I'm sorry. I didn't mean to
9 cut you off.

10 A. On the sidewalk at the scene.

11 Q. And I'll ask you generally with respect to
12 these exhibits, State's 6 through 11 that you just
13 describe, do those appear to be or are they the
14 same pictures that you took of the scene back in
15 1993?

16 A. Do they appear to be --

17 Q. Do they accurately represent what you saw
18 back in 1993?

19 A. Yes.

20 MR. LOISEL: Thank you, is Officer.
21 Nothing further.

22 THE COURT: Cross.

23 MR. WINGATE: We have no questions.

1 THE COURT: Officer, you are excused.

2 Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: Do you want to call it a
5 day?

6 MR. LOISEL: Judge, can we approach?

7 THE COURT: Sure.

8 (WHEREUPON THE FOLLOWING DISCUSSION WAS
9 HELD AT THE BENCH.)

10 MR. LOISEL: Judge, I understand we're
11 getting close to calling it quits, but as I
12 indicated before, this witness Alfonzo Davis is
13 the State's next witness. He's been here both
14 days taking off work. If there's any way we
15 could attempt to get him on today. Mr. Wingate
16 indicated that he may want to talk to him
17 tomorrow, but is there any way that we can at
18 least start the examination today since he's been
19 here?

20 THE COURT: I don't care. Get it
21 started.

22 MR. LOISEL: I mean, if there's any way
23 we could finish, that would obviously be the

1 State's preference. I don't know how long you
2 want to go.

3 THE COURT: We'll have to see. Go
4 ahead and call your witness.

5 (WHEREUPON THE PRECEDING DISCUSSION AT
6 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
7 WERE HELD.)

8 MR. LOISEL: State would call Alfonzo
9 Davis.

10 - - -

11 ALFONZO DAVIS,
12 being first duly sworn by the Court, testified as
13 follows:

14 THE COURT: Would you give us you're
15 name and spelling of your name, please.

16 THE WITNESS: Alfonzo Davis,
17 A-L-F-O-N-Z-O, D-A-V-I-S.

18 THE COURT: All right.

19 MR. LOISEL: Thank you, Judge.

20 - - -

21 DIRECT EXAMINATION

22 BY MR. LOISEL

23 Q. Mr. Davis, you live here in Toledo?

1 A. Yes.

2 Q. And are you familiar with Robert Wilson?

3 A. Yes.

4 Q. How do you know Robert Wilson?

5 A. My mother's husband.

6 Q. So what's your mother's name?

7 A. Janet Wilson.

8 Q. And is he your father or are you a blood

9 relation?

10 A. No.

11 Q. So he's your stepfather?

12 A. I guess you would call it that.

13 Q. Okay. And how long have you known the
14 Defendant? I'm sorry. Do you see Mr. Wilson here
15 in the courtroom?

16 A. Yes.

17 Q. And can you point to him and describe what
18 he's wearing? What is he wearing?

19 A. Oh, gray jumpsuit.

20 THE COURT: The record will reflect
21 that the witness has identified the Defendant.

22 Q. Now, I asked you and I got ahead of myself.
23 How long have you known Mr. Wilson?

1 A. Been a while. I don't know exactly how
2 long, but been say about 16 years or so, something
3 like that.

4 Q. Okay. So how old are you?

5 A. How old am I? 33.

6 Q. So about half of your life you've known him?

7 A. Yep.

8 Q. Now, would you say what kind of a
9 relationship do you have with the Defendant?

10 A. That depends. I mean --

11 Q. Are you close with him?

12 A. He's okay guy. I mean, but as far as my
13 mother's husband, that's a different story.

14 Q. What do you mean?

15 A. Just, he's a nice guy, but being my mother's
16 husband I prefer him not to be.

17 Q. Okay. Fair enough. Now, do you remember
18 having contact with Mr. Wilson and your mother
19 back in 1993, the night in December?

20 A. To the best of my knowledge, yes.

21 Q. Now, obviously that's 15, 14 and a half some
22 odd years ago, right? Why do you remember one
23 night in December of 1993?

1 A. Only night that they stayed at our house.

2 Q. And who was it that stayed at your house?

3 A. My mother and Robert Wilson.

4 Q. He never stayed at your house before that?

5 A. Not at this house, no.

6 Q. He never stayed at that house after that?

7 A. Not that I can recall.

8 Q. Now, with respect to that night back in
9 December, did you ever have a conversation with
10 the Defendant about what took place on that night?

11 A. Vaguely.

12 Q. Do you recall when that conversation took
13 place?

14 A. Not what day it took place.

15 Q. I mean, was it close to that night in
16 December, was it a month later, years later?

17 A. Oh, no, years later.

18 Q. Years later?

19 A. Yes.

20 Q. And can you tell us about that conversation?

21 A. Well, we was riding around and some stuff
22 happened with my brother and me. Somebody got
23 killed and my brother told the paper this and that

1 and roughly he said Snitch bitches die.

2 Q. Who said that?

3 A. Robert Wilson.

4 Q. He said Snitch bitches die?

5 A. Yeah.

6 Q. And did he say anything else with respect to
7 that comment?

8 A. To the best of my knowledge, not that I
9 could recall.

10 Q. What else did you two talk about while you
11 were in the car?

12 A. I don't recall everything. I don't -- that
13 was a long time ago.

14 Q. But you recall that part of the
15 conversation?

16 A. Yeah. Yes, I do, because it was about some
17 stuff that we went through, me and my brother, and
18 a friend of ours got killed.

19 Q. And how did that relate to your conversation
20 then with Mr. Wilson?

21 A. Because my brother snitched on the guys that
22 killed him and he said That's what happens, snitch
23 bitches get killed.

1 Q. Now, with respect to the investigation of
2 Brenda Navarre, did you ever have an
3 investigation?

4 A. I'm sorry?

5 Q. Did you ever -- with respect to the
6 Brenda Navarre murder, did you ever have a chance
7 to talk to Toledo Police Officers?

8 A. Just at my house.

9 Q. Do you remember when that took place?

10 A. A couple years ago, September two years ago
11 or so.

12 Q. Okay. Do you recall who you talked to?

13 A. Not their names, no, but the guy sitting
14 next to you and another guy.

15 Q. If I told you his name was
16 Detective Beavers, does that ring any bells?

17 A. Not really, no.

18 Q. But he talked to you?

19 A. Yes.

20 Q. And another guy?

21 A. Yes.

22 Q. And this took place at your house?

23 A. Yes.

1 Q. Now, when you talked to them, did you talk
2 to him about the conversation we just talked
3 about?

4 A. Yes.

5 Q. You told him about the conversation that you
6 had with the Defendant?

7 A. Yes.

8 Q. And do you recall telling them more specific
9 information --

10 MR. WINGATE: I'm going to object.

11 Q. -- on that date?

12 MR. WINGATE: I'm going to object. May
13 we approach?

14 (WHEREUPON THE FOLLOWING DISCUSSION WAS
15 HELD AT THE BENCH.)

16 MR. WINGATE: Judge, the objection is
17 that I think at this juncture as on direct
18 examination he's attempting to cross-examine this
19 witness. This is his witness. This is the one
20 he called.

21 MR. LOISEL: Judge, the jury can hear
22 everything Mr. Wingate says. I ask that he not
23 talk too loud. I don't think he's doing it on

1 purpose.

2 What I'm trying to establish is that his
3 statement back then was clearer and more precise
4 with what Robert Wilson said. I had a feeling he
5 may do this, so I'm trying to establish some
6 surprise and affirmative damage with respect to
7 this witness. I mean, we can go through the
8 rules with respect to him. I believe it is
9 803 -- I'm sorry -- 607 about the State's ability
10 to then cross-examine this witness. So I'm just
11 trying to get to the base of what he talked about
12 with the police because he gave them a different
13 statement back in 2006.

14 MR. WINGATE: Well, the thing is this --

15 MR. LOISEL: If I could show surprise
16 and affirmative damage, this is the first time he
17 told me -- didn't say what he told me he said.
18 He has previously told me different statements.
19 This isn't the first time. I've not heard that.
20 He's not mentioning those statements. It comes
21 as a surprise. It is affirmative damage because
22 he makes statements privy -- I'm sorry -- he
23 makes specific statements attributable to

1 Robert Wilson.

2 MR. WINGATE: Even from the witness
3 stand he's made statements attributable to
4 Robert Wilson. He said, Robert Wilson, Snitch
5 bitches die. I guess the problem --

6 THE COURT: These statements that were
7 to Defendant?

8 MR. LOISEL: Sure.

9 THE COURT: Are you sure?

10 MR. LOISEL: Yes.

11 MR. WINGATE: But the other thing,
12 Judge, is if you're calling them statements,
13 again, we go back to whether or not they have
14 been adopted or authored by this particular
15 person, whether he's even seen what was written
16 in the report. The Prosecutor is now calling it
17 a statement and I guess Mike is just in a long
18 line of prosecutors who, when it comes to
19 divulging a prior 16(B)(1)(g) request as a
20 statement, it becomes a narrative. It is what
21 the detective wrote. If he, the witness, has not
22 seen or authored, then it cannot be a statement.
23 So, how can you impeach him for the purposes of

1 turning over with something that's not a
2 statement but now that I want to impeach him, it
3 is a statement. They just can't have it both
4 ways.

5 MR. LOISEL: What I can do is show it
6 to him. If he adopts it as his statement, then
7 it just dovetails into --

8 THE COURT: I'm going to allow it.
9 You can show it to him and see if it refreshes
10 his recollection.

11 MR. WINGATE: Note our objection because
12 it is not a statement.

13 (WHEREUPON THE PRECEDING DISCUSSION AT
14 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
15 WERE HELD.)

16 BY MR. LOISEL:

17 Q. Mr. Davis, at this point if I had an
18 opportunity, I'm going to show you a previous
19 statement that you made to the detective when they
20 came out to your house.

21 A. Yes.

22 Q. If you could take a look at that and see if
23 that refreshes your recollection?

1 MR. WINGATE: Could we see -- may we
2 approach?

3 (WHEREUPON THE FOLLOWING DISCUSSION WAS
4 HELD AT THE BENCH.)

5 MR. WINGATE: We would like to see the
6 document that's being given, if you don't mind.

7 THE COURT: You have an opportunity to
8 review it after he's had an opportunity to see,
9 whether it refreshes his recollection or not.

10 MR. WINGATE: Your Honor, I guess what
11 I'm getting to is there are two parts to this
12 statement and I don't believe that the part --
13 part of it is not this particular witnesses.

14 THE COURT: We'll see.

15 (WHEREUPON THE PRECEDING DISCUSSION AT
16 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
17 WERE HELD.)

18 THE COURT: I'm going to allow him
19 to -- the question is does it refresh your
20 recollection or not. Don't say what it says.

21 A. Okay. Okay. Yes, it does.

22 Q. Did you have a chance to look at both pages?

23 A. Yes, I did.

1 Q. And that does refresh your recollection --

2 A. Yes.

3 Q. -- as to what you said to the detectives
4 back on looks like September 7th, 2006?

5 A. Yes.

6 Q. Now, let me ask you, do you recall with more
7 specificity what you talked about with those
8 detectives back then?

9 A. Which part? We talked about where we lived,
10 where we stayed, and when we drove around in the
11 car.

12 Q. With respect to the conversation that you
13 had with Robert Wilson. I'm sorry. You're
14 correct.

15 Do you recall now with more specificity
16 that conversation that you had with Robert Wilson?

17 A. Yes, that he had to do what he had to do.

18 Q. Well, you read the statement, correct?

19 A. Yes, I did.

20 Q. What did he have to do?

21 A. He had to kill the snitch bitch. I mean,
22 that's what he said. I never heard a name before.
23 The only time I heard a name was from my mother.

1 Q. Now, do you know with respect to that
2 conversation how he killed the snitch bitch?

3 A. Dropped a brick on her head.

4 Q. And he told you that back around 1995?

5 A. To the best of my knowledge, yes.

6 Q. Okay.

7 MR. LOISEL: Nothing further. Thank
8 you.

9 THE COURT: Mr. Wingate.

10 MR. WINGATE: Yes, may we approach?

11 THE COURT: Sure.

12 (WHEREUPON THE FOLLOWING DISCUSSION WAS
13 HELD AT THE BENCH.)

14 MR. WINGATE: First we would like to see
15 the statement that he gave him to refresh his
16 recollection.

17 MR. LOISEL: Okay.

18 THE COURT: Go ahead. Do you want to
19 take a minute?

20 MR. WINGATE: Yes.

21 THE COURT: Go ahead.

22 MR. LOISEL: For the purposes of the
23 record I suppose we should probably have this

1 marked, or I can do that in open court or here.

2 MR. WINGATE: What?

3 MR. MCELROY: It is the only --

4 MR. LOISEL: To have this marked so we
5 know.

6 THE COURT: That would be State's
7 Exhibit 12?

8 MR. LOISEL: Yes.

9 (WHEREUPON THE PRECEDING DISCUSSION AT
10 THE BENCH CONCLUDED AND THE FOLLOWING PROCEEDINGS
11 WERE HELD.)

12 - - -

13 CROSS-EXAMINATION

14 BY MR. WINGATE:

15 Q. All right, Mr. Davis. As it relates to the
16 statement that you just gave, you said it occurred
17 in 1995?

18 A. I don't remember the date.

19 Q. All right. But now you don't remember when
20 this conversation took place?

21 A. It was a long time ago, no, I don't.

22 Q. All right. A long time ago a conversation
23 took place and you were told this, right?

1 A. Yes.

2 Q. Okay. And you talked to the detectives on
3 September the 7th of 2006, correct?

4 A. Yes.

5 Q. All right. And I'll ask you to look at the
6 last line, last sentence on Page 1 of that
7 exhibit. Have you had a chance to read it?

8 A. Yes.

9 Q. All right. Could I have it back?

10 On September the 6th -- I'm sorry.
11 September the 7th, 2006, your mother told you that
12 he had dropped a rock on a girls head that was
13 snitching, right?

14 A. Yes.

15 Q. That's what's in that report, right?

16 A. Yes.

17 Q. She's the one that gave you that
18 information?

19 A. Probably, to the best of my knowledge. I'm
20 not for sure. It was so long ago, both of them
21 were.

22 Q. Right. And I understand that. And you and
23 I had an opportunity to talk, correct?

1 A. Yes.

2 Q. And you love your mother?

3 A. Yes, I do.

4 Q. A lot?

5 A. Yes, I do.

6 Q. Can't say the same for Robert?

7 A. Nope.

8 Q. All right. We're being up front. And with
9 Robert, like him as a person but he's not the one
10 for your mother?

11 A. No.

12 Q. And you have problems with that?

13 A. Yes.

14 Q. And as far as the statement he dropped a
15 rock on the head of the girl that was snitching,
16 that came from Janet Wilson, your mother, correct?

17 A. To the best of my knowledge I --

18 Q. Well, all I'm saying is this is what you
19 told the detective --

20 A. To the best of my knowledge, yes.

21 Q. -- right, on September the 7th, 2006?

22 MR. WINGATE: Just one second. Your
23 Honor, could we approach for a second? I need

1 some information read back to me.

2 (OFF THE RECORD.)

3 BY MR. WINGATE:

4 Q. And as it relates -- and we've talked
5 before, right?

6 A. Right.

7 Q. And although it was a brief conversation and
8 at the time you told me about marijuana -- and
9 you're not charged with anything, there won't be
10 any charges coming. But you talked to me about
11 the amount of marijuana you was smoking at the
12 time, correct --

13 A. Yes.

14 Q. -- or during that period of time?

15 And when the Prosecutor asked you the
16 question about him, meaning Robert Wilson, telling
17 you about a snitch bitch in 1995, that didn't
18 occur, did it?

19 A. I don't know when it happened.

20 Q. All right. As a matter of fact, let me just
21 ask it this way in conjunction with anything your
22 mother had told you about a rock being dropped --

23 MR. LOISEL: Objection, Your Honor.

1 It's been asked and answered.

2 THE COURT: Overruled.

3 Q. About a rock being dropped on someone's
4 head, and you don't know when she told you that;
5 is that correct?

6 A. Yes.

7 Q. All right. And as a matter of fact, that
8 could be the source of your information that you
9 are testifying to today, correct?

10 A. I'm not for sure.

11 MR. WINGATE: We have no further
12 questions.

13 THE COURT: Redirect?

14 MR. LOISEL: Just briefly. Thank you,
15 Judge. May I approach?

16 - - -

17 REDIRECT EXAMINATION

18 BY MR. LOISEL:

19 Q. Mr. Davis, Attorney Wingate asked you to
20 look at the --

21 A. I seen it.

22 Q. -- the last line of the first page of
23 State's Exhibit 12; do you recall that?

1 A. Yes.

2 Q. Can you look on Page 2, the fourth line down
3 and look at that for me, please. Have you had a
4 cans to look at it?

5 A. Yes.

6 Q. Now, Mr. Wingate asked you whether or not it
7 is your recollection or your mother's recollection
8 about the Defendant talking about dropping a rock
9 on a snitch bitch.

10 A. Yes.

11 Q. That second page, what do you indicate
12 there?

13 MR. WINGATE: Object, Your Honor.

14 THE COURT: This is the officer's
15 statement of the witness's statement -- or
16 officer writing up of the witness's statement; is
17 that correct?

18 MR. LOISEL: Yes.

19 THE WITNESS: Yes.

20 MR. LOISEL: And it refers to --
21 Mr. Wingate pointed him to a statement that was
22 attributable to his mother.

23 THE COURT: Isn't that hearsay?

1 MR. LOISEL: He's opened the door with
2 respect to any statement with that
3 supplemental --

4 MR. WINGATE: May we approach?

5 THE COURT: No. You can talk right
6 there.

7 MR. WINGATE: Well, Your Honor, as far
8 as the State saying I opened the door, that is
9 not correct. The State didn't object. I'm
10 objecting. It is hearsay and I'm asking that it
11 be not allowed.

12 THE COURT: I understand that it was
13 the Defendant's statement, but now I understand
14 it is the mother's statement, so it is clearly
15 hearsay. Is there an exception you're aware of?

16 MR. LOISEL: Your Honor, it is the
17 Defendant's -- same that he used to refresh his
18 recollection.

19 THE COURT: He said it was his
20 mother's statement.

21 MR. LOISEL: Well, that's what
22 Mr. Wingate wants the jury to believe.

23 MR. WINGATE: Your Honor, I will object

1 to that and ask for a mistrial because it is
2 prosecutorial misconduct.

3 MR. LOISEL: It is not. Judge, if you
4 recall the line of questioning, he asked him to
5 look at the bottom and look at the statement
6 attributable to his mother and I'm asking him to
7 look further into his statement and it is not
8 attributable to his mother, so I'm trying to
9 correct that.

10 THE COURT: You can't impeach your own
11 witness. Sustained.

12 MR. LOISEL: Fine. Nothing further.

13 THE COURT: Anything else?

14 MR. WINGATE: No.

15 THE COURT: All right. We're going to
16 take a recess for the day. At this time, members
17 of the jury, you will not discuss this case among
18 yourselves, nor with anyone else. Do not allow
19 anyone to discuss this case in your presence, or
20 form any opinions until the case has been
21 submitted to you. What time do you want to start
22 tomorrow morning?

23 MR. WINGATE: 9:00.

1 MR. LOISEL: That's fine, Judge.

2 THE COURT: All right. See you back
3 here at 9:00 o'clock. We're in recess.

4 (WHEREUPON COURT ADJOURNED FOR THE DAY ON
5 SEPTEMBER 3, 2008, AT 4:50 P.M.)

6 - - -

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C E R T I F I C A T E

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I, THE UNDERSIGNED, HEREBY CERTIFY

8

THAT THE ABOVE AND FOREGOING IS A TRUE AND

9

COMPLETE TRANSCRIPT OF THE PROCEEDINGS HAD IN THE

10

TRIAL OF THE ABOVE-ENTITLED CAUSE.

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Stacey L. McDevitt, RPR

18

Official Court

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Reporter

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